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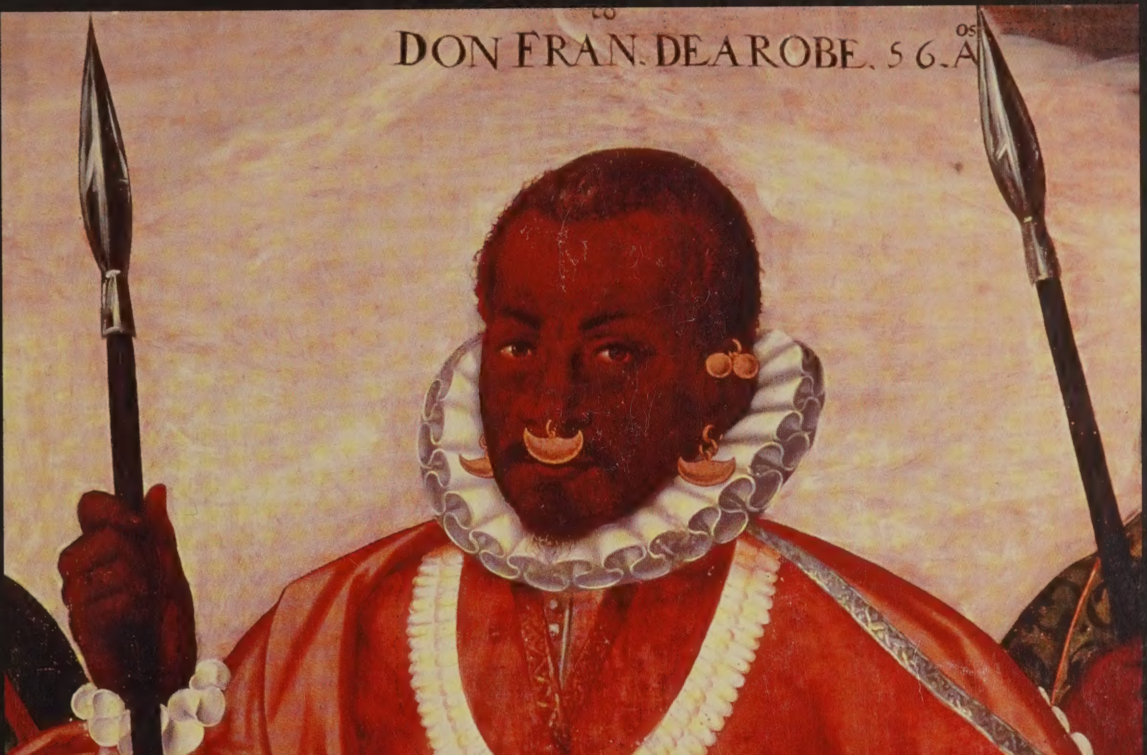

RECOVERING PERU'S SPANISH COLONIAL HERITAGE

ANATOMY OF AN ART STING

Updates on Cambodia's Claim; Dinosaur Fossil; Richard Prince; WWII Suit; VARA

INCORPORATING STOLEN ART ALERT®

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EDITOR-IN-CHIEF: Sharon Flescher
EDITOR: Kathleen Ferguson
DESIGN: Alice Fisk MacKenzie

International Foundation for Art Research (IFAR)
500 Fifth Avenue, Suite 935, New York, NY 10110
Tel: (212) 391-6234 Fax: (212) 391-8794 www.ifar.org

EXECUTIVE DIRECTOR: Sharon Flescher
ASSISTANT TO THE DIRECTOR: Kathleen Ferguson
ART RESEARCH DIRECTOR: Lisa Duffy-Zeballos

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COVER: ANDRÉS SÁNCHEZ GALQUE. *Portrait of Don Francisco de Arobe and His Sons Pedro and Domingo (Los Mulatos de Esmeraldas)*, 1599. (Detail) Oil on canvas. 36" x 69". Museo de America, Madrid. Photo Credit: Erich Lessing / Art Resource, NY. See story on p. 21.

SEIZED DINOSAUR BACK IN MONGOLIA WILL BE HOUSED IN NEW MUSEUM; MORE FOSSILS TO FOLLOW

"Lenny," the 70 million-year-old *Tyrannosaurus Bataar* seized by federal authorities last year **(FIG. 1)**,[1] has returned home to Mongolia. On Monday, May 6, U.S. Immigration and Customs Enforcement (ICE) officials formally returned the rare, nearly-complete 8-foot high by 24-foot long skeleton to Mongolian officials in a repatriation ceremony in New York **(FIG. 2)**.

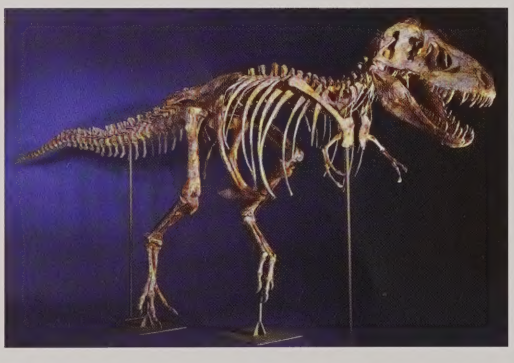

FIGURE 1. ***Tyrannosaurus Bataar*, Late Cretaceous period. Dinosaur skeleton seized by the U.S. Government and returned to Mongolia. Photo: Mark Mauthner, Heritage Auctions.**

As IFAR previously reported,[2] the skeleton, which came to the attention of Mongolian officials when it was put up for auction in New York, was seized on the grounds that it was stolen state property claimed by Mongolia under its cultural heritage laws and had been illegally imported into the United States. At the ceremony, ICE Director John Morton declared that the U.S. "cannot allow the greed of a few looters and schemers to trump the cultural interests of an entire nation," and that by returning the skeleton to Mongolia, we were undoing a great wrong.

The repatriated Bataar will anchor a newly created "Central Museum of Dinosaurs," whose first activity, according to the museum's director, will be the creation of an open database of all fossil findings originating in Mongolia — both those abroad and those located in Mongolia — in an effort to minimize future smuggling.

Robert Painter, the Houston attorney who originally intervened on behalf of Mongolia in an unsuccessful attempt to block the Heritage Auction sale (the Bataaar sold for $1,052,500 but it was made contingent on the outcome of Mongolia's claim) was awarded Mongolia's highest honor at the repatriation ceremony, at which Mongolia's Harvard-educated President, Tsakhia Elbegdorj, thanked the many U.S. agencies and offices that played a role in Lenny's return.

REPATRIATION
CEREMONY

FIGURE 2. U.S. officials formally returned the Bataar to Mongolia at a ceremony in New York on May 6. Photo: U.S. Mission to the U.N.

Eric Prokopi, the Florida-based "commercial paleontologist" arrested for illegally importing the dinosaur from an unnamed dealer in Great Britain,[3] agreed to forfeit Lenny, as well as two additional *Tyrannosaurus Bataar* skeletons, a *Saurolophus* skeleton, and an *Oviraptor* skeleton, as part of a plea deal. He also agreed to assist in disassembling and packing the fossils to ensure their safe return to Mongolia.

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[1] *United States v. One Tyrannosaurus Bataar Skeleton*, No. 12-cv-4760 (PKC) (S.D.N.Y. filed June 18, 2012).

[2] See Mary Morabito Rosewater and Sharon Flescher, "Florida Paleontologist Makes No Bones; Pleads Guilty to Smuggling Dinosaur Fossils," *IFAR Journal*, Vol. 13, no. 4 (2012), pp. 2-5.

[3] *United States v. Prokopi*, No. 12-cr-0981 (S.D.N.Y. filed Oct. 5, 2012).

After pleading guilty last December to the charges against him, Prokopi is free on bail (reduced from $250,000 to $100,000) and awaits sentencing. He faces up to 17 years in prison and hefty fines, but, according to the *New York Times*,[4] his defense attorney, Georges Lederman, hopes his cooperation will result in "a favorable outcome."

Days after the repatriation ceremony, ICE announced the recovery of more than a dozen additional dinosaur skeletons which will be returned to Mongolia and will also be displayed in the new museum. Interestingly, these fossils were "provided to the U.S. Attorney's Office" by Christopher Moore, a British fossil dealer who reportedly contacted the U.S. Attorney's Office during the investigation to inform it that he possessed numerous Mongolian fossils. Upon being advised that the fossils in his possession were considered stolen property, Moore agreed to forfeit them. No criminal charges are pending against him and Mongolia has agreed to drop its criminal investigation into his activities once the fossils are in Mongolia.

ICE also revealed that an unnamed California auction house — to which Prokopi allegedly consigned fossils — has agreed to assist in facilitating the return of yet more dinosaur fossils to Mongolia: a *Hadrosaur* skeleton and a Raptor Matrix (containing at least five *Oviraptor* skeletons).

• • •

—ANN-MARGRET GIDLEY,
IFAR LEGAL ASSOCIATE
and SHARON FLESCHER

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[4] Ralph Blumenthal, "Dinosaur Skeleton to Be Returned to Mongolia" *New York Times*, May 6, 2013, p. C3.

SETTLEMENT TALKS OVER EGYPTIAN MUMMY MASK UNRAVEL

There has been a hitch in a story that IFAR has been covering since 2005[1] — the battle in federal court over Egypt's claim for a 19th Dynasty mummy mask of Ka-Nefer-Nefer now in the St. Louis Museum of Art (SLAM). Although in our last issue we reported that SLAM and the Republic of Egypt were close to resolving their longstanding ownership dispute and a positive announcement was anticipated at a hearing scheduled for April 17, the U.S. Government, which seeks to return the mask to Egypt, announced instead that the talks had broken down, and it "no longer believe[d] that a nonjudicial resolution of this case [wa]s likely in the foreseeable future." The case has been placed back on the Eighth Circuit Court of Appeals' docket,[2] and in June the Government filed its appeal of the lower court's dismissal of its forfeiture Complaint against SLAM, which the court found insufficient because it merely stated "that the Mask was found to be 'missing' from Egypt in 1973," without articulating "the who, what, when or where of the alleged events surrounding the alleged 'stealing'."[3]

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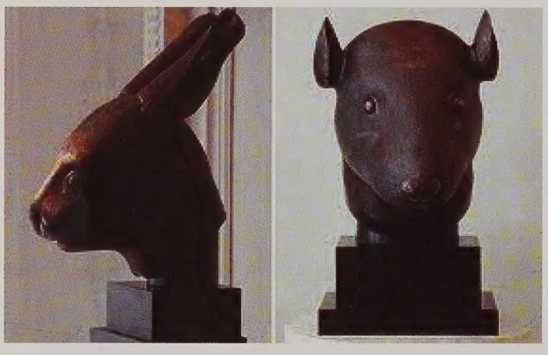
[1] *See IFAR Journal*, Vol. 8, no. 2 (2005–06), Vol. 12, no. 4 (2011), Vol. 13, no. 4 (2013).

[2] *See United States v. Mask of Ka-Nefer-Nefer,* No. 12-cv-2578 (8th Cir. filed Mar. 16, 2011).

[3] *See United States v. Mask of Ka-Nefer-Nefer,* No. 11-504 slip op. (HEA) (E.D. Mo. Mar. 31, 2012).

BRONZE RAT AND RABBIT RETURN TO CHINA THROUGH PINAULT GIFT

Four years after their controversial sale at Christie's in Paris, two 18th century Qing Dynasty bronze fountainheads of a *Rabbit* and a *Rat* **(FIGS. 1 & 2)** have arrived back in China.



FIGURES 1 and 2. 18th century Qing Dynasty bronze fountainheads of a *Rabbit* (left) and a *Rat* (right) returned to China in June.

In a ceremony in Beijing on June 28, as *IFAR Journal* was going to press, François-Henri Pinault, French businessman, chief executive of the company that owns Christie's and son of the noted collector, François Pinault, officially returned the works. Pinault made the offer to return the bronzes in April, while in China as part of a business delegation accompanying French President François Hollande. Also in April, perhaps not coincidentally, Christie's announced that it had received permission to begin operating as an independent auction house on mainland China.

The return ended a long and contentious saga. As *IFAR Journal* reported at the time (Vol. 10, nos. 3&4, 2009, p. 2), the two heads were claimed by China as part of its cultural heritage when they were put up for auction in the extraordinary 5-day sale of the collection of the late clothing designer, Yves Saint Laurent, and his partner Pierre Bergé. A lawsuit to stop the sale ensued, but the French court allowed it to proceed. The winning bid — 14 million euros ($17.9 USD at the time) for each head — was made by Cai Mingchao, the owner of an auction house in China. He reneged, purportedly for patriotic reasons, and the bronzes went back to Bergé, who offered, rather disingenuously, to give them to China for free, if it would agree to "observe human rights and give liberty to the Tibetan people. …" The works remained with Bergé until they were acquired by the Pinault family at an undisclosed time.

The two thinly cast, realistic bronze heads were part of a group of twelve Chinese Zodiac animal heads atop clothed, human bodies made of stone, which flanked a fountain in the Old Summer Palace — better known as the Yuanming Yuan — near Beijing. Each head spouted water for two hours each day.

The Palace was burned by French and British troops in 1860 during the Second Opium War in retaliation for the torture and murder of 18 emissaries who had been sent as peace negotiators. The bronze heads were among thousands of items looted at the time, some of which have come up for auction over the years.

Although the heads were created in quasi-European style and were in fact designed by European Jesuit missionaries employed by the court, the destruction and looting of the Palace has remained a sore point for the Chinese who have vocally sought the objects' return. Five of the heads that turned up in the West have since gone back to China, through purchase and donation, and are on display in Beijing; the *Rat* and the *Rabbit* now make seven. One other head is said to be in Taiwan, although there is no confirming documentation, and the whereabouts of the other four are not publicly known.

Pinault's offer in April to return the works was warmly received in China. A news report by the Chinese State Administration of Cultural Heritage (SACH) at the time called it "an expression of friendship toward the Chinese people."

— S. F.

• • •

APPEALS COURT SAYS PRINCE MADE "FAIR USE" OF (MOST OF) CARIOU'S COPYRIGHTED PHOTOS

CARIOU PLANS TO ASK SUPREME COURT TO REVIEW

Depending on whom you ask, a U.S. Court of Appeals ruling in favor of appropriation artist Richard Prince in a closely-watched federal case either clarifies or muddies copyright law's "fair use" exemption.

In April, the Second Circuit, which sits in New York, reversed in part a lower court's decision and concluded that twenty-five of thirty allegedly infringing Prince works made fair use, as a matter of law, of copyrighted works by photographer Patrick Cariou because, among other things, they were sufficiently "transformative" — or, in the court's words, they "manifest an entirely different aesthetic from [the original works]." The court was less certain as to whether the remaining five works qualified as fair use, and has remanded that determination to the lower court, which it has instructed to apply a different standard than it previously used. Critics, and a dissenting judge, however, question whether the Appellate Court got it right. The Second Circuit may not have the last word, though. Cariou's lawyer, Daniel Brooks, told IFAR that Cariou plans to seek U.S. Supreme Court review.

As IFAR previously reported,[1] Cariou filed a copyright infringement action in 2011 against Prince, Prince's dealer, Larry Gagosian, and the Gagosian Gallery, claiming that Prince's *Canal Zone* paintings, exhibited and sold by Gagosian, infringed Cariou's copyrights in a 2000 book, *Yes Rasta*. The book contained photographs that Cariou shot over a roughly six-year period in rural Jamaica where he lived amongst Rastafarians, a people traditionally marginalized and discriminated against in Jamaican society. As of January 2010, only 5,791 copies of the book had been sold, three of which were bought by Prince.

The dispute began in November 2008 when Cariou learned that an upcoming New York show featuring his photographs had been cancelled when his gallery became reluctant to sell work that had "been done" already. Unbeknownst to Cariou, Prince had incorporated, in varying degrees, a number of Cariou's *Yes Rasta* photographs in his own mixed-media series, *Canal Zone*. Eight of Prince's *Canal Zone* paintings sold for a total of $10,480,000 and seven others were traded for art valued between six and eight million dollars. Cariou's photographs, on the other hand, were expected to be offered at $3,000 to $20,000 in the show that was cancelled.

Cariou's lawsuit, filed in the Southern District of New York, reflects an inherent tension between appropriation artists, who incorporate other artists' work into their own (usually without permission), and the sources from whom they "lift" material, frequently photographers. On a more general level, the case has captivated artists, dealers, museums, and the copyright world at large because it has required the judiciary to balance the codified restrictions of copyright law against freedom of artistic expression in addressing what constitutes "fair use."

> "In its much-anticipated opinion, issued on April 25, the Second Circuit said that the District Court got it all wrong."

In his defense, Prince argued that his paintings did not infringe Cariou's copyrights because they qualified as a "fair use" under Section 107 of the Copyright Act, which exempts criticism, commentary, news reporting, research, and certain other uses from infringement as a "fair use" of copyrighted material.[2]

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[1] Adam Yokell, "Photographer Prevails in Prince Copyright Infringement Action: Court Takes Firm Stance on Appropriation Art and Fair Use; Defendants Appeal," *IFAR Journal*, Vol. 12, no. 3 (2011), pp. 8–12.

> "Using its own artistic judgment, the Second Circuit found that twenty-five of the thirty works at issue 'manifest an entirely different aesthetic from Cariou's photographs …'"

The Copyright Act includes a non-exclusive list of four determinants as to whether a particular use qualifies as "fair,"[3] but in recent years a concept not mentioned in the statute has become the sine qua non of fair use analysis: transformativeness. Originating in a 1990 article that Judge Pierre Leval wrote for the *Harvard Law Review*,[4] transformativeness looks at whether a new work "merely supersede[s] the objects of the original creation or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message …"[5] And while the U.S. Supreme Court has stated that transformation is not always necessary to a finding of fair use, it has noted that the more transformative a work, the "less will be the significance of other factors …"[6]

In March 2011, the Federal District Court in New York rejected Prince's fair use defense,[7] concluding that artistic appropriation is not an inherently fair use. The Court stated that Prince's paintings could only be transformative to the degree that they commented on the underlying copyrighted works, and that Prince's own testimony that he had not intended to comment upon "any aspects of the original works or on the broader [Rastafarian] culture" undermined his defense.

Accordingly, the District Court granted Cariou's Motion for Summary Judgment, holding Prince liable for direct copyright infringement, and finding the Gagosian defendants — his dealer and gallery — liable for contributory and vicarious infringement. The Court then entered what many considered to be a shockingly broad injunction, ordering the defendants to turn over all infringing copies of the *Yes Rasta* photographs, including any unsold *Canal Zone* paintings "for impounding, destruction, or other disposition, as [Cariou] determines …" and requiring them to inform all current or future owners of the *Canal Zone* paintings that they were made illegally and could not be legally displayed — whether in private or public.

The defendants appealed to the Second Circuit Court of Appeals, arguing that the District Court had applied an incorrect standard and that the injunction was overly broad.

Foreseeing ramifications for the art world and fearing the stifling of artistic expression and potential reluctance to display certain types of artworks, nine prominent museums and the Association of Art Museum Directors, as well as The Andy Warhol Foundation for the Visual Arts, filed amicus (friend of the court) briefs urging the Second Circuit to reverse the decision. They also expressed dismay with the District Court's "extreme, destructive remedy." Meanwhile, the American Society of Media Photographers and the Picture Archive Council of America sided with Cariou, labeling Prince's works "derivative" (and therefore infringing) rather than transformative.

Google, Inc. got involved as well, arguing that, under precedent, a use need not comment on the original to be considered transformative. And while it stopped short of taking a side, Google called for a careful and considered application of the fair use doctrine, noting that the District Court's decision threatened digital media.

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[2] *See* Copyrights, 17 U.S.C. §107.

[3] "… In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—(1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; (4) the effect of the use upon the potential market for or value of the copyrighted work." *Ibid.*

[4] Pierre Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105 (March 1990).

[5] *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 579 (U.S. 1994) (citing Leval).

[6] *Ibid.*

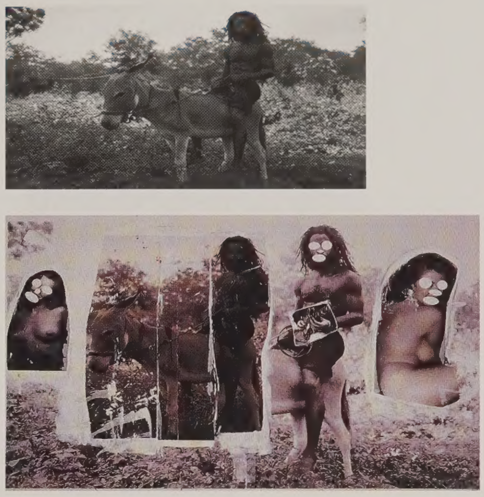
[7] *Cariou v. Prince*, No. 08 Civ. 11327, *2011 U.S. Dist. LEXIS 29070* (S.D.N.Y. Mar. 18, 2011).

In its much-anticipated opinion,[8] issued on April 25, the Second Circuit said that the District Court got it all wrong. First, it criticized the lower court for applying an incorrect standard to conclude that Prince's works were not a fair use of Cariou's photographs, clarifying that "the law does not require that a secondary use comment on the original artist or work, or popular culture." Instead, the Court said, "to qualify as a fair use, a new work generally must alter the original with 'new expression, meaning, or message'."[9] According to the Second Circuit, the District Court erroneously relied solely upon Prince's testimony that he did not intend to comment upon Cariou's work when it determined that the contested works were not transformative. Instead, the Circuit Court said, it should have also considered "how the artworks may reasonably be perceived" in order to assess their transformative nature.

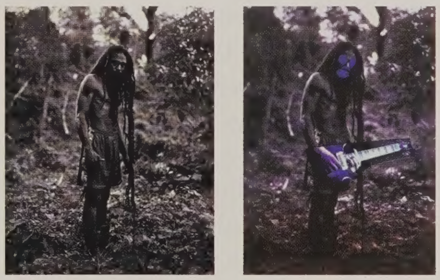
Then, using its own artistic judgment, the Second Circuit found that twenty-five of the thirty works at issue "manifest an entirely different aesthetic from Cariou's photographs" in their physical differences (e.g., media, size, color, etc.) and in their spirit (the bucolic nature of Cariou's work in contrast with Prince's "jarring" "post-apocalyptic" work) **(FIGS. 1A and B)**. In short, Prince's works, the Court said, "have a different character, give Cariou's photographs a new expression, and employ new aesthetics with creative and communicative results distinct from Cariou's." Thus, the twenty-five works were "transformative" *as a matter of law* and made fair use of Cariou's copyrighted work.

The remaining five works, on the other hand, presented "closer questions" and, the Court noted, did not "sufficiently differ from the photographs" to allow the Court to "confidently make a determination about their transformative nature as a matter of law" **(FIGS. 2A and B)**. Accordingly, the Court remanded a decision on these remaining works to the District Court, instructing it to use a different standard than it had the first time and now consider whether they presented a "new expression, meaning, or message" in order to determine whether they made fair use of Cariou's work.

In his partial dissent, Judge Wallace of the Ninth Circuit, sitting by designation, agreed that the District Court applied the



FIGURES 1A AND B. (A) (top) PATRICK CARIOU, ***Yes Rasta*, 2000. Photograph. © Patrick Cariou. Photo: From *Yes Rasta* by Patrick Cariou, published by powerHouse Books.** (B) RICHARD PRINCE, ***Back to the Garden*, 2008. Collage, inkjet and acrylic on canvas, 333 x 254 cm. One of the 25 works by Prince that the court found sufficiently transformative.**



FIGURES 2A AND B. (A)(left) PATRICK CARIOU, ***Yes Rasta*, 2000. Photograph. © Patrick Cariou. Photo: From *Yes Rasta* by Patrick Cariou, published by powerHouse Books.** (B) RICHARD PRINCE, ***Graduation*, 2008. Collage, inkjet and acrylic on canvas, 185 x 133 cm. One of five works the appellate court remanded for reconsideration.**

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[8] *Cariou v. Prince*, No. 11-1197-cv *slip op.* (2d Cir. Apr. 25, 2013).

[9] Quoting *Campbell v. Acuff-Rose*, 510 U.S. at 579.

wrong legal standard, but failed to see how the majority could "confidently draw a distinction between the twenty-five works it has identified as constituting fair use and the five works that do not readily lend themselves to a fair use determination." Acknowledging his limited art expertise, he would have remanded *all* thirty works to the District Court for reconsideration under the corrected legal standard, together with additional evidence. He also would not have precluded the lower court from considering Prince's testimony altogether.

"Other critics of the ruling have objected to its reliance on transformativeness alone …"

Other critics of the Second Circuit's ruling have objected to its reliance on transformativeness alone, a seeming evisceration of the four-factor analysis of fair-use enumerated in the Copyright Act. While originally one of three sub-factors used to assess the first factor — the purpose and character of a work — balanced against the three other factors, the Second Circuit's ruling suggests that if a work is transformative, then the other factors don't matter at all. In addition, critics say the Court failed to distinguish between a "transformative" work and a "derivative" work. Section 101 of the Copyright Act reserves for a copyright holder the right to create derivative works, but some question what is left of this right in light of the Court's decision. Furthermore, they ask how, as a practical matter, judges will make determinations as to how a work is "reasonably perceived" when they are evaluating whether it is transformative. Here, the court merely used its own observations, but perhaps future cases would require expert opinion or a jury's opinion.

More generally, the opinion has been criticized for lacking instructive guidance for courts to follow and for failing to offer much predictability for the future, as the distinction between the twenty-five non-infringing works and the five "too close to call" works is not very clear. As one critic said, the decision represents a missed opportunity.

One thing that was not addressed by the Second Circuit, but may be addressed by the lower court on remand, is the extent to which galleries, dealers, and museums may be secondarily liable for an artist's direct infringement. This concern is what prompted many museums to file friend of the court briefs and is of particular concern to museums and galleries showing appropriation artists.

NEXT STEPS

In May, Cariou asked the entire Second Circuit to re-consider the April decision, which was made by a three-judge panel, but his petition for a rehearing en banc was denied on June 10th. He argued that a rehearing was warranted because the three-judge panel misapplied U.S. Supreme Court precedent and, instead, established a "vague and unworkable standard based on its personal art views" and also improperly disregarded Prince's own testimony. Cariou noted that the panel's April decision conflicted with other — 6th and 9th Circuit — Court of Appeals' decisions regarding fair use, specifically concerning the effect of an allegedly infringing use upon the potential market for a copyrighted work. Brooks, Cariou's attorney, told IFAR that these arguments will likely find their way into their petition seeking Supreme Court review (certiorari). Their deadline for filing is September 8th (90 days from the Second Circuit's refusal to rehear the case).

In the meantime, proceedings on remand are expected to continue, and the District Court has set an August 2nd deadline for Cariou to address how the five remanded works should be evaluated under the legal standard articulated by the Second Circuit. For now, IFAR has learned, the 25 works that the Second Circuit deemed non-infringing under fair use remain locked in a storage facility.

—A. M. G. and S. F.

NOT WHAT IT ONCE WAS: ARTIST'S DISAVOWAL OF HER WORK STANDS; APPEAL FILED

A New York state court case that initially looked like it might address the scope of artists' rights under the Visual Artists Rights Act (VARA) may not do so after all.

VARA, a federal statute which became law in 1990,[1] grants certain so-called "moral rights" to artists, such as the rights to claim authorship of their work and to disclaim use of their name in connection with a work they did not create. Among other things, VARA permits a living artist to disavow a work "in the event of a distortion, mutilation, or other modification" that would be "prejudicial to [the artist's] honor or reputation." Exceptions were placed on this general right, however, such as modification to a work that is due to the passage of time, or that results from the inherent nature of materials or from conservation. The full scope of an artist's rights under the statute, including the limitations, still remains largely undefined.

A recent decision in a closely-watched case — *Marc Jancou Fine Art, Ltd. v. Sotheby's, Inc.*[2] — which many thought would require the court to address, and possibly limit, the scope of an artist's right of attribution under VARA, did not do so. The case stems from art dealer Marc Jancou's consignment of *Cowboys Milking* **(FIG. 1)**, a large (4 by 6 feet) 1990 aluminum print by Cady Noland, to Sotheby's for a fall 2011 sale. Just days before the scheduled auction, Noland inspected the work, which was estimated to sell for $250,000 – 350,000, admitted authorship, and then disavowed the work, claiming that it "materially differ[ed] from … its creation." Her reference was to seemingly minor damage and attempted restoration that Sotheby's described as "crimps" in the upper right and lower left corners of the work. At her request, Sotheby's pulled the work from sale. Jancou, devastated that a similar Noland work had sold for $6 million the previous day, cried foul and sued Sotheby's and Noland — claiming $6 million in actual damages and $20 million in punitive damages.

Last November (2012), the New York State Supreme Court dismissed Jancou's breach of contract claim against Sotheby's because, according to the terms of the consignment agreement, Sotheby's retained the right to withdraw the work based on any doubt as to its authenticity or attribution. Therefore, once Noland disclaimed the work, the court said, Sotheby's had the right to withdraw it.

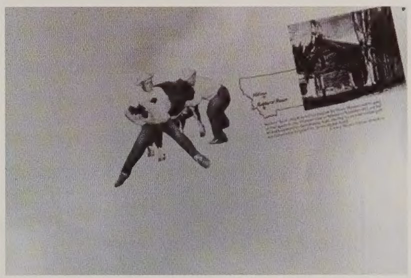

FIGURE 1. **CADY NOLAND (?) *Cowboys Milking*, 1990. Aluminum print disavowed by the artist.**

Now (May 1), the same trial court has dismissed Jancou's claim against Noland for tortious interference, noting that such a claim cannot stand absent a breached contract. Since Sotheby's did not breach its contract with Jancou, Noland could not have tortiously interfered with the contract. The court did not address whether the damage to the work fell under the VARA exceptions for modification that is due to the passage of time or resulting from the inherent nature of materials or from conservation.

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[1] 17 U.S.C. §106A.

[2] *Marc Jancou Fine Art, Ltd. v. Sotheby's*, No. 650316-2012, 2012 WL 299946 (N.Y. Sup. Ct. Nov. 13, 2012). For IFAR's previous coverage, see "Lawsuit May Test Scope of Artists' Rights," *IFAR Journal*, Vol. 13, no. 4 (2012), p. 15.

> "The court did not address whether the damage to the work fell under the VARA exceptions …"

Counterclaims filed by Sotheby's and Noland against Jancou have not yet been addressed by the court. Sotheby's has accused Jancou of breaching the consignment agreement and fraud, alleging that he failed to disclose that the work had previously been withdrawn from Christie's on the same grounds. Noland seeks injunctive relief to prevent Jancou from using her name in association with the work.

Jancou has appealed the breach of contract decision in favor of Sotheby's and stated that he will appeal the May dismissal of the suit against Noland. If the appellate court agrees with the trial court's rulings, then the limits to an artist's rights under VARA will not be addressed by *any* court at this point and will remain, for now, largely undefined.

—A. M. G. and S. F.

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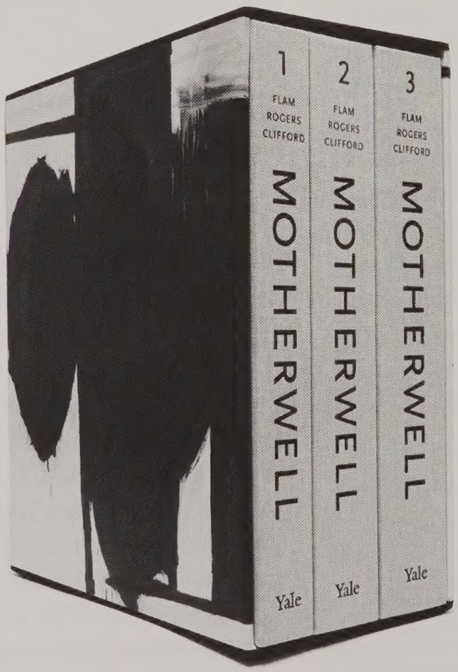

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MET RETURNS KHMER SCULPTURES TO CAMBODIA; CASE AGAINST SOTHEBY'S ALLOWED TO MOVE FORWARD

In a story that IFAR has been following closely,[1] two 10th-century Khmer sandstone sculptures have been voluntarily repatriated to Cambodia by the Metropolitan Museum of Art **(FIG. 1)** and a third Khmer sculpture, the subject of a contentious federal lawsuit, may be one step closer to returning to Cambodia as well **(FIG. 2)**.

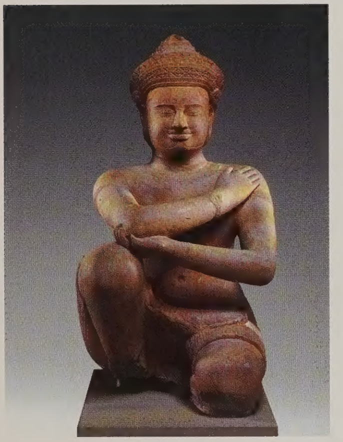

FIGURE 1. ***Head of a Wrestler*** **combined with the body of** ***Kneeling Male Attendant,*** **Cambodia, Khmer style of Koh Ker, Angkor period, 10th century. Stone. One of two works returned by the Metropolitan Museum to Cambodia in June. Photo © The Metropolitan Museum of Art.**

THE MET

The repatriation ceremony took place on June 11 at Phnom Phen International Airport, amidst the chanting of Buddhist monks and expressions of gratitude by Cambodian officials for the Met's historic actions. Known as the *Kneeling Attendants,* the sculptures stood in a Cambodian jungle temple for more than one thousand years before being acquired by the museum in multiple pieces between 1987 and 1992. They have flanked the entrance to the Met's Southeast Asian galleries since 1994. At the repatriation ceremony, Maxwell Hearn, head of the Met's Asian department, said that it had been "a great privilege to be able to show works of Khmer art in New York" but that the museum was "very pleased to see these pieces rightfully returned to Cambodia."

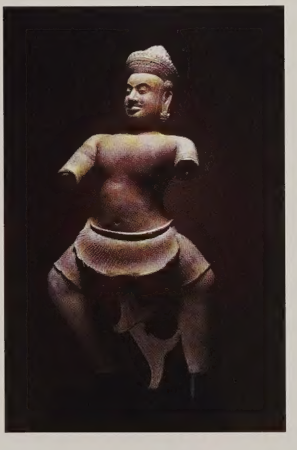

FIGURE 2. ***Athlete,*** **Cambodia, Khmer, Koh Ker period, 10th century. Sandstone. Ht: 62 3/8" (158.4 cm). Pulled from auction and claimed by Cambodia. Photo: court documents.**

The return followed the museum's announcement in May that, based on facts not known at the time of acquisition, it would return the two masterworks to Cambodia. Although a surprise to many, the decision came after months of behind-the-scenes negotiations in which Cambodian officials presented evidence, including photographs of the statues' broken bases, which remained in the temple, and eyewitness statements that the sculptures stood in situ until at least 1970. The Met's General Counsel, together with the museum's curator of Southeast Asian Art, visited the site in March.

Cambodia believes that these and other sculptures from the same temple complex were smuggled out of the country in the early 1970s during its civil war. The 1970 date is important, as guidelines published in 2008 by both the American Association of Museums (now known as the

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[1] See Ann-Margret Gidley and Sharon Flescher, "Cambodia's Repatriation Campaign: Developments in the Case Against Sotheby's; Claims Against the Met and Norton Simon Museums May Be Filed," *IFAR Journal*, Vol. 13, no. 4 (2012), pp. 17-23.

American Alliance of Museums) and the Association of Art Museum Directors discourage acquisition of ancient art lacking documentation of having left its probable country of modern discovery before November 17, 1970 — the date of a UNESCO Convention to combat the illicit traffic of cultural property.

In its press release, the Met's director, Thomas Campbell, explained that the museum was "committed to applying rigorous provenance standards not only to new acquisitions, but to the study of works long in its collections..." and that "[i]n returning the statues, the museum [wa]s acting to strengthen the good relationship it ha[d] long maintained with scholarly institutions and colleagues in Cambodia ..."

Ek Tha, a Cambodian spokesperson, used the ceremony as an opportunity to call on other museums holding Khmer sculptures suspected of being looted to follow the Met's example. While he stopped short of naming any specific institutions, such works have been previously identified at the Norton Simon Museum in California, the Cleveland Museum of Art, and the Dallas Museum of Art.

The statues returned from the Met were displayed at Prime Minister Hun Sen's office, known as the Peace Palace, during UNESCO's 37th annual World Heritage Committee meeting in June and will likely find a permanent home in either Cambodia's National Museum in the capital or in the northwestern city of Siam Reap, closer to the jungle temple where they originally stood.

LAWSUIT OVER RELATED SCULPTURE MOVES FORWARD

Meanwhile, a New York federal court ruled in March that Cambodia's lawsuit seeking the return of another Khmer sculpture believed to originate from the same temple complex could move forward.[2] The 10th century life-sized warrior, known as the *Duryodhana*, slated for a Sotheby's March 2011 auction **(FIG. 3)**, was pulled from sale at the last minute at the request of the Cambodian government which alleged that it had been looted. After negotiations between Cambodia and Sotheby's failed, the U.S. government filed a forfeiture suit on Cambodia's behalf.

Sotheby's filed a Motion to Dismiss the suit, but it was denied. Instead, the court permitted the Government to add additional facts to its original Complaint as the case moves forward. At this stage at least, the court found that the Government had pleaded adequately the central facts, including that the statue was stolen, that it remained stolen upon import into the U.S., and that Sotheby's knew it was stolen.

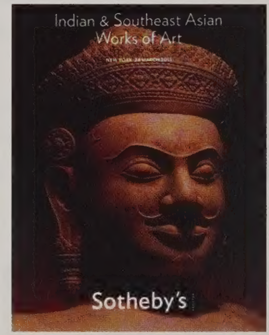

FIGURE 3. Sotheby's auction catalogue. The disputed sculpture, pulled from the sale, was lot #27.

As to the French Colonial laws dating back to 1900, which Cambodia cites to argue that the statue was state property when it was stolen, the court noted that further evidence, possibly including expert testimony, is needed to determine whether those laws in fact vested ownership in Cambodia, which became an independent kingdom in 1953. In the meantime, however, the benefit of the doubt works in Cambodia's favor. The court also rejected Sotheby's argument that Cambodia needed to have actively enforced the laws for them to be applied in this case — noting that

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[2] *United States v. A 10th Century Cambodian Sandstone Sculpture Currently Located at Sotheby's in New York, New York ("U.S. v. Cambodian Sculpture")*, No. 12-cv-2600-GBD (S.D.N.Y. Mar. 28, 2013).

> "The court's decision not to dismiss the case does not mean that it believes all of the accusations, just that the Government has alleged enough facts to support a reasonable belief that it *might* be able to prove its case..."

enforcement may be probative of the intent behind the laws but that it is not, as Sotheby's had argued, a pleading requirement. The court's decision not to dismiss the case does not mean that it believes all of the accusations, just that the Government has alleged enough facts to support a reasonable belief that it *might* be able to prove its case at trial and that, therefore, the case can go forward.

In May, Sotheby's and the consignor, Belgian collector Decia Ruspoli di Poggia Suasa, filed a joint response to the Government's Amended Complaint (response delayed pending resolution of the Motion to Dismiss) denying most of the allegations.[3] They re-asserted that the statue was purchased in good faith by Ruspoli's late husband and that Sotheby's had obtained proper, documented provenance in the form of a 1975 invoice from a reputable London auction house before importing the sculpture into the U.S. for sale. Sotheby's and Ruspoli also noted that, at the time of the 1975 purchase, "Cambodia had enacted no clear and unambiguous laws declaring itself the owner of all antiquities in Cambodia." Moreover, prior to this case, Cambodia had not "sought the return of objects similar to the statue, ha[d] specifically affirmed in writing that an object Cambodia believed to be the statue's twin 'belongs to' the [Norton Simon Museum] in which it is prominently displayed, and ha[d] never before relied upon the legal theory of the French colonial decrees" that it now raises.

In addition to denying most of the Government's allegations, Sotheby's' and Ruspoli's response raises a multitude of defenses. Specifically, they argue that the Government has failed to state a cognizable claim, that the case cannot proceed because Ruspoli is an innocent owner, that the suit is barred by unwarranted delay and the doctrine of adverse possession, and that there are several defects in the French Colonial decrees.

Sotheby's and Ruspoli have requested a pretrial hearing on what may be the dispositive issue in the case — whether any of the French Colonial decrees that the "Government has identified clearly and unambiguously declare Cambodia to be the owner of the statue at issue." The Government has opposed this request, characterizing it as "yet another effort...to delay discovery" and arguing that factual issues about Cambodia's ownership, which cannot be determined at such a hearing, exist, and that therefore, the requested hearing would not end the case. Nonetheless, Sotheby's and Ruspoli argue that a hearing is supported by legal precedent and could resolve the case efficiently while avoiding time-consuming and costly discovery. In their request, Sotheby's and Ruspoli also accuse the Government of inventing new legal theories that lack any legal basis and warn the Government that, even if the cost of litigation exceeds the estimated value of the statue, they will not "surrender."

And so, the legal battle over the thousand-year-old Hindu warrior continues.

—A. M. G. and S. F.

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[3] Answer, *U.S. v. Cambodian Sculpture* (filed May 6, 2013), ECF No. 48.

HERZOG HEIRS WIN APPEAL IN QUEST TO RECOVER NAZI-LOOTED ART FROM HUNGARY

The heirs of Baron Mór Lipót Herzog, the Jewish Hungarian banker who amassed a renowned pre-WWII collection of around 2,500 objects, principally Old Masters, are one step closer to recovering part of the collection **(FIGS. 1 & 2)** — about 40 works — from the Republic of Hungary.[1] On April 19, the United States Court of Appeals for the District of Columbia Circuit affirmed a lower court ruling that rejected Hungary's "bevy of arguments" as to why the bulk of the suit should not proceed in the U.S.[2] Perhaps more significantly, the Appellate Court reversed the part of the lower court's decision that would have forestalled the heirs' attempt to recover eleven of the forty works.

LOOTED ART

In what is considered one of the largest still unresolved Holocaust-era art claims, the family's quest goes back to the 1950's when the Baron's daughter, Erzsébet de Csepel, a U.S. citizen, filed a claim with the U.S. government for compensation on artworks that she knew to be in the collection of the Hungarian Museum of Fine Arts. The works, along with many others, had been seized by Hungarian officials and Nazi collaborators in 1944, after the Herzog family had fled Hungary. When the Communist Party took control of Hungary in 1947, many museum pieces were declared to be state property. The U.S. awarded Erzsébet $210,000 (for the artworks as well as for certain real estate), the funds for which came from Hungarian assets the U.S. had frozen to when it severed diplomatic ties with Communist Hungary. In accepting the payment, Erzsébet reserved her right to proceed against Hungary for additional relief.

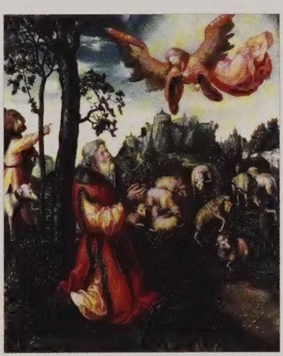

FIGURE 1. Lucas Cranach the Elder. *The Annunciation to Saint Joachim.* Oil on panel, 61 x 51 cm. Museum of Fine Arts, Budapest. (SzM.62.3). One of the eleven works from the former Herzog Collection that a D.C. appellate court, overturning a lower court, ruled the Herzog heirs can pursue.

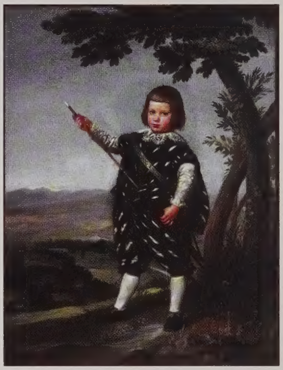

FIGURE 2. Alonso Cano. *Infante Don Baltasar Carlos.* Oil on canvas, 144 x 109 cm. Museum of Fine Arts, Budapest. (SzM.51.2828). One of the eleven works from the former Herzog Collection that a D.C. appellate court, overturning a lower court, ruled the Herzog heirs can pursue.

When Hungary's Communist government collapsed in 1989, Erzsébet resumed her attempts to reclaim the artworks. Hungary returned seven items before her death in 1992, but kept others.

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[1] For IFAR's previous coverage of this story, *see* Sharon Flescher and Mary Morabito Rosewater, "Herzog Heirs Can Proceed with U.S. Action to Recover All but 11 Artworks: Hungary Says 'Not So Fast'; Seeks Immediate Appeal," *IFAR Journal,* Vol. 12, no. 4 (2011), pp. 2-5.

[2] *De Csepel v. Hungary*, No. 11-7096, slip op. (D.D.C. Apr. 19, 2013).

THE LAWSUITS

In 1999, Erzsébet's daughter, Martha Nierenberg, filed a Hungarian court lawsuit for the return of the same twelve paintings that were the subject of her mother's 1955 U.S. claim. Hungary thereafter returned one of the works but defended its right to keep the others. In 2008, a Hungarian appellate court found in Hungary's favor, ruling that Erzsébet had been compensated in the 1950s, and that in any case, Hungary had established its right to the artworks through adverse possession.

In 2010, Martha's son, David de Csepel, a California resident, along with two Italian cousins, sued Hungary in federal District Court in Washington, D.C. The lawsuit sought the return of over forty artworks as well as an accounting of all works from the Herzog collection still in Hungarian possession. De Csepel argued that Hungary is not an owner of the artworks, but, rather, a "bailee" required to return them.

In February 2010, Hungary filed a Motion to Dismiss the suit, claiming that, as a foreign sovereign, it could not be sued in the United States. It also asserted, among other things, that the U.S. court was obliged to defer to the 2008 Hungarian court decision; that the United States was an inconvenient forum for hearing the dispute ("forum non conveniens"); and that the suit was barred by the statute of limitations, international comity, the Act of State Doctrine, and the political question doctrine.

On September 1, 2011, the District Court found that Hungary was not entitled to sovereign immunity because the Complaint stated that the art had been taken in "violation of international law." Thus, Hungary's alleged actions fell within the "expropriation exception" to the Foreign Sovereign Immunity Act (FSIA), 28 U.S.C. § 1605(a)(3). The court further held that the 1955 payment to Erzsébet did not foreclose de Csepel from seeking additional recovery against Hungary.

The court went on to uphold the Herzog heirs' "bailment" theory, and found that it was sufficiently convenient to litigate the dispute in the U.S. The family had also adequately alleged that the statute of limitations had been "equitably tolled" during the Communist era as well as during the Hungarian litigation. In terms of the Act of State Doctrine – which precludes U.S. courts from deciding the validity of public acts of a recognized foreign sovereign within its own borders – the court noted that when the alleged "sovereign" is "Nazi Germany" and its allies, "courts have consistently held that the act of state doctrine does not apply to the Nazi taking of Jewish property during the Holocaust."

> "The decision allows them to claim all forty artworks, including the eleven that the lower court said were off-limits."

Finally, in Hungary's favor, the District Court held that that the 2008 Hungarian ruling had been a fair and final decision as to eleven of the works at issue, and, thus, de Csepel could not re-litigate the fate of those eleven artworks in the United States.

Both parties sought interlocutory appellate review (that is, immediate review, before the trial court reaches a final decision on the merits) of the District Court's decision.

COURT OF APPEALS DECISION

In its April 19 decision, the D.C. Circuit Court of Appeals affirmed the District Court's decision in part and reversed in part, providing good news for the heirs. The decision allows them to claim all forty artworks, including the eleven that the lower court said were off-limits. The Court declined to rule on the expropriation exception to the FSIA that the District Court relied on to conclude that Hungary could be sued in the United States, instead finding that the claims could proceed under a different exception. The commercial activity exception to the FSIA abrogates sovereign immunity where an action is based upon "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."[3] The Court found that Hungary's alleged breach of bailment agreements – the type of actions by which a private party engages in trade and traffic or commerce – fall comfortably within this exception. The Court repeatedly emphasized that the suit is *not* based upon the initial expropriation of the collection during the Holocaust, but instead is grounded in the heirs' claims that Hungary created and repudiated subsequently formed bailment agreements, thereby distinguishing the case from one in which allegations are based solely on disputed takings of property.

As noted above, the Court reversed the portion of the District Court's decision that barred the heirs' claims to the eleven works that the Hungarian court had already ruled on in 2008. The Court noted that the heirs' allegations of due process violations in the Hungarian adjudication presented the kind of fact-intensive issues that should not be resolved on a motion to dismiss. Nonetheless, the Appellate Court expressed no opinion as to whether the alleged due process violations actually occurred or whether, if they did, they would warrant non-recognition of the Hungarian adjudication, stating that such judgment should be reserved for summary judgment or trial.

NEXT STEPS

Hungary filed a petition for a rehearing *en banc* – that is, before the entire District of Columbia Court of Appeals - which was denied and has petitioned the U.S. Supreme Court to review the case. Meanwhile, according to Bloomberg News, a chief of staff to Hungary's Prime Minister said, without specifically mentioning the Herzog family, that his office is preparing a list disputed works in Hungarian museums with the aim of returning them to their rightful owners.[4]

—S. F. and A. M. G.

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[3] 28 U.S.C. § 1605(a)(2).

[4] Catherine Hickley, *Herzog Heirs Say They Are Closer to Recovering Nazi-Looted Art*, Bloomberg News (Apr. 24, 2013), www.bloomberg.com.

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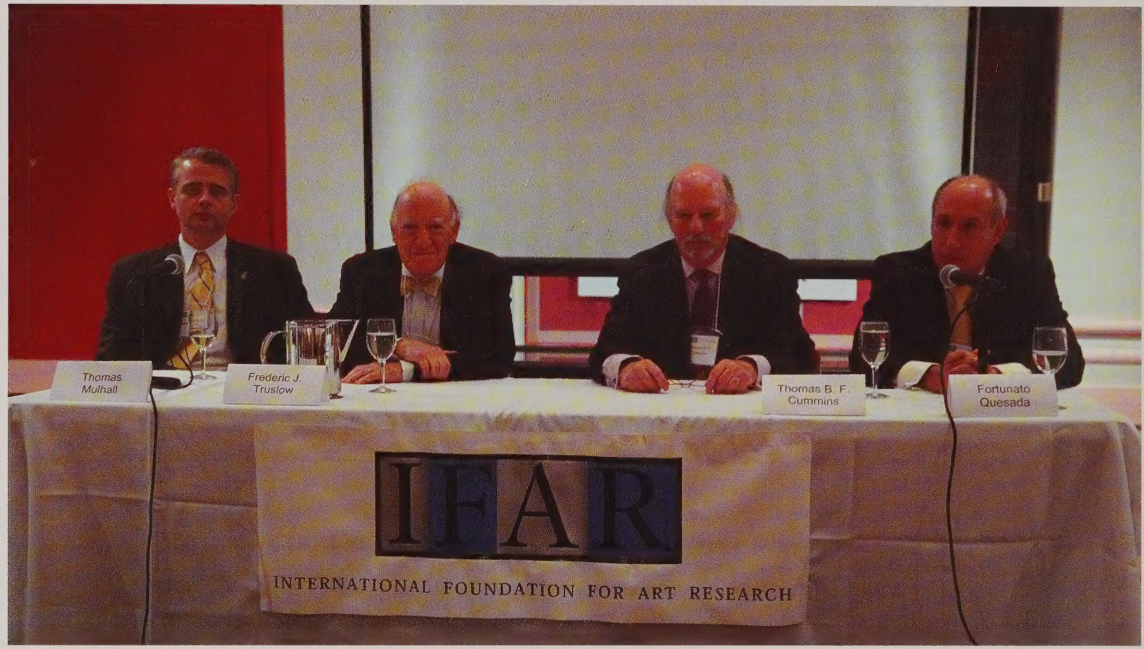
IT'S NOT JUST MACHU PICCHU: RECOVERING PERU'S SPANISH COLONIAL HERITAGE

An *IFAR Evening*, October 22, 2012



EDITOR'S NOTE:

In October 2012, IFAR hosted an Evening *at the Grolier Club in New York on the risks to Peru's Spanish Colonial cultural heritage and the steps the governments of Peru and the U.S. are taking to address the problem. In particular, the* IFAR Evening *highlighted a 30-year-old photographic inventory of close to 3,000 paintings in churches in Cuzco, Peru that IFAR created in the 1980s at the request of the Peruvian government. In the interim years, a large number of the Cuzco inventoried works have disappeared, several turning up for sale in the United States. The Cuzco Inventory has proven helpful to law enforcement in recovering several works, three of which were recently returned to Peru by the U.S. government. The* Evening *also provided an art historical overview of Spanish Colonial painting and a discussion of the resurgent interest in collecting it.*

Participating in the Evening *were the Consul General of Peru in New York, speakers from academia and law, and the Supervisory Special Agent from Homeland Security's Cultural Property, Art and Antiquities Program in New York, accompanied by two other Special Agents. Below are the edited proceedings of that program and the Q&A that followed.*

SPEAKERS IN SEQUENCE:

FORTUNATO QUESADA
Consul General of Peru in New York

THOMAS B. F. CUMMINS
Dumbarton Oaks Professor
of Pre-Columbian and Colonial Art,
Harvard University

FREDERIC J. TRUSLOW
Consultant for IFAR's Cuzco
Inventory

THOMAS MULHALL
Supervisory Special Agent,
Dept. of Homeland Security (HSI),
New York

THE PERUVIAN PERSPECTIVE

FORTUNATO QUESADA*

In my 29 years as a career diplomat, this is the first time that I have shared the podium with a scholar from Harvard and an official from Homeland Security to discuss the theft and recovery of art.

Throughout history there have been people willing to steal gold, silver, paintings and works of art, and people willing to buy these things illegally. Peru is no exception. The theft of Peru's cultural heritage has been going on for many years, as IFAR said, not only in Machu Picchu, but also in Apurimac, Puno, and the tombs of the Lords of Sipan near the city of Chiclayo. It is estimated that 75% of the artifacts from the Lords of Sipan have been stolen; consequently, we only have 25% of the original artifacts. This state of affairs truly represents the world turned upside down.

History has its jokes. When you study history in an English school, Sir Francis Drake is a hero. For Peruvians, he was the first pirate. Peru was a rich country until 1535, when the Spanish explorer Francisco Pizarro demanded two rooms filled with silver and one room filled with gold to liberate the last Inca king, Atahualpa. Pizarro took the gold and silver, but he killed the Incas. Even so, Peru remained a wealthy country even after it gained its independence in 1821. When the Belgians were seeking independence from the Netherlands in 1830, they borrowed 1 million pounds of gold from Peru. For this, Peru was declared Protector in Perpetuity to the Kingdom of Belgium, a title it still holds. So we were and still are a rich country. Peru is one of the three main global producers of gold, silver, and other metals; but we are also culturally rich, with a huge number of Colonial paintings, handcrafted works, tejidos (textiles), all of which are highly collectible. Unfortunately, this demand creates a black market for these objects abroad, above all for beautiful works of art crafted from Peruvian gold and silver.

People from all countries are involved in the illegal trafficking of stolen art. Museums are also involved because they want to acquire beautiful pieces for their collections. The United States and other countries have specialists who know what

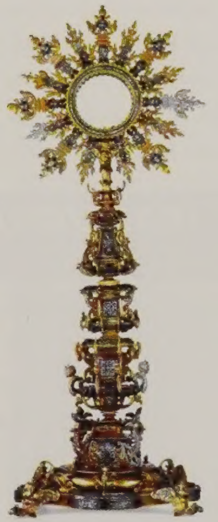


FIGURE 1. ***Spanish Colonial Silver-Gilt and Enamel Monstrance*** **Cuzco, Peru, c. 1700. Returned to the Peruvian government in July 2012.**

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* Fortunato Quesada, a career diplomat, was Consul General of Peru in New York from August 2011 to March 2013. Prior to that, and from the time of his arrival in the U.S. in 2010, he was Deputy Consul General. In March 2013, he joined the Peruvian Embassy in El Salvador as Deputy Chief.

art is original and what is fake, and what works of art have been stolen and what has to be returned to its original owners.

Recently, as a result of increased international cooperation and Peruvian agreements with a number of countries including the United States, progress is being made. Last July (2012), a beautiful monstrance that had been put up for sale at Christie's auction house in New York **(FIG. 1)** was successfully returned to Peru along with several stolen Colonial paintings and other objects. Before coming to the U.S., I worked with authorities in Belgium and Germany regarding the theft of some huacos (pre-Hispanic ceremonial pottery). One of the most significant developments took place in November 2010, when after many years of negotiations, Yale University decided to return to Peru a few hundred objects and thousands of artifacts that were taken from Macchu Pichu by Hiram Bingham, the explorer who "discovered" the site in 1911.

"Go to Peru, see the gold, but take only photographs."

Since arriving in the United States in August 2010, I have been a witness to the superb job being done by the Department of Homeland Security, and it is extremely gratifying when works of art belonging to your country are recovered. Repatriation ceremonies are very simple but emotional events because the people of Peru are being given back objects that were illegally sold or stolen from our country. So I will conclude my talk by saying, "Go to Peru, see the gold, but take only photographs."

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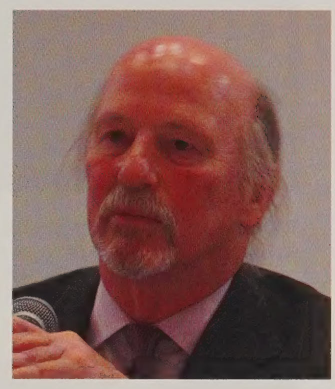
SPANISH COLONIAL ART: CHANGING TASTES, EVOLVING RISKS

THOMAS B. F. CUMMINS*



Religious art theft in Peru is a subject that has been dear to my heart since I began my work. How and why do Colonial artworks disappear? Before answering, it is important to note that the Viceroyalty of Peru was much larger than the modern nation state of Peru. It extended all the way from the Río de la Plata and Buenos Aires up the west coast of South America to Panama. So when one speaks of Colonial or "Peruvian" art, we are actually talking about a vast area of production and very different kinds of works.

In 1981 two events demonstrated to me the importance of the kind of work that IFAR does and the importance of maintaining vigilance over the material that I was working on. The first instance occurred when I was researching documents in the Archbishop's archive. Two Runakuna (Quechua for people) burst into the archive asking in Quechua, "Where is the Archbishop? Our painting is gone!" One of the devotional paintings had been stolen, and it has still not been recovered. It is just one of the many works that have disappeared in Peru.

Not all works are stolen, however; others disappear for what I would consider to be legitimate reasons. This goes to the second instance I referred to, which occurred when I visited a small remote church (in the 1980s it could take 5 or 6 hours to go 30 miles) to see several paintings that I knew were there, only to be told by the parish priest that the church had sold them to repair the roof. The issue in that case was one of competing cultural needs. Do you repair the church that the paintings are in, or do you not repair the church and risk the paintings and the church being destroyed? The parish was trapped in an unfortunate catch-22, whose consequence was that the paintings went onto the market, and then who knows where. One example of the kind of damage Colonial paintings are sometimes subjected to is the great painting that used to hang at the front of the Cuzco Cathedral commemorating the Miracle of Suntuwasi, when Saint James the Major miraculously saved the Spanish by extinguishing a fire, and then destroyed the Inca **(FIG. 1)**. Badly damaged while in the cathedral, the painting was later transferred to a small church, where it deteriorated still further, until some day it too will disappear, but not into a collection: forever.

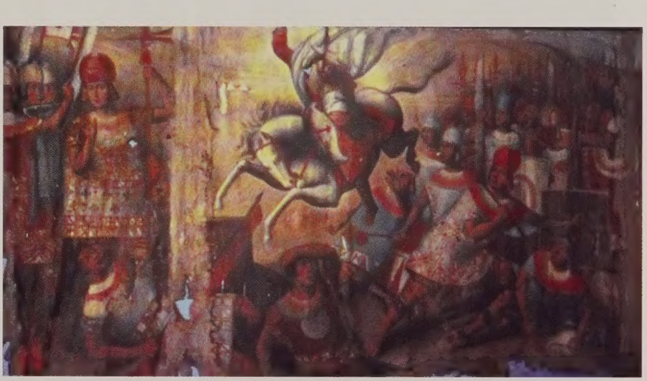


FIGURE 1. ***Miracle of the Suntuwasi*, Cuzco School, 18th century. Church of Pujiura, Cuzco, showing St. James in the center extinguishing a fire and killing the Inca.**

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* Thomas B. F. Cummins, Ph.D., is The Dumbarton Oaks Professor of the History of Pre-Columbian and Colonial Art, Harvard University, and also Chairman of the Department of the History of Art and Architecture. Previously, he taught at the University of Chicago and was the Director of The Center for Latin American Studies.

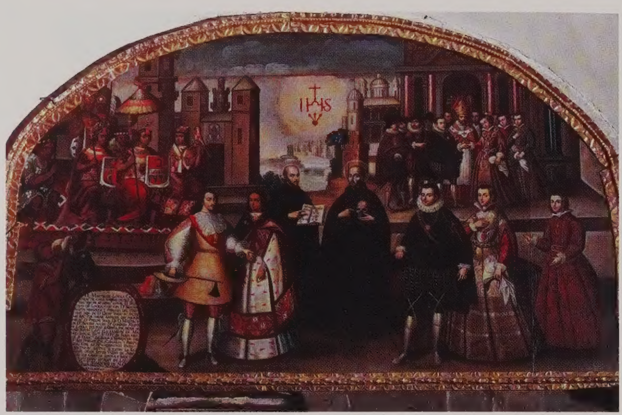

FIGURE 2. *Marriage of Martin de Loyola to Princess Doña Beatriz, and Don Juan Borja to Princess Lorenza.* **Cuzco School, 1718. Oil on canvas, 69 x 66 5/16". Museo Pedro de Osma, Lima.**

Why do people collect Colonial art? It is startling for many. For example, one of the most famous Colonial paintings in Cuzco **(FIG. 2)** comes from the Jesuit church known as *La Compañía*, and celebrates two marriages in 1590 — one of the nephew of the founder of the Jesuit order, Don Martín de Loyola, to Beatriz Coya, the richest woman in the valley of Cuzco and a direct descendent of the Inca, and also the marriage of their daughter, Lorenza, to the grand nephew of San Francisco de Borja. The painting hangs in the church as a commemoration of a historical event, but as a work of art it is sui generis; you will never see anything like it anywhere else.

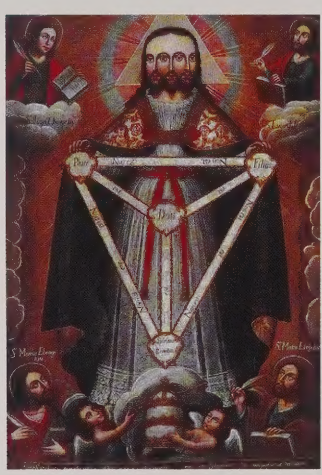

FIGURE 3. ***The Holy Trinity,* Cuzco School, ca. 1700. Oil on canvas, 71 3/5 x 48 4/5". Museo de Arte de Lima.**

Andean painting, especially Cusqueñan painting, is radically different from other kinds of paintings. Typically, it is very flat, wordy, and flashy, with a lot of gold. It can be disconcerting for the modern eye because it deals with religious doctrine in ways we do not. For example, in Cusqueñan images of the Trinity, the concept of three beings in one god is shown as three faces in one body **(FIG. 3)**. This representation of the Trinity actually had been prohibited by the Council of Trent (1545–1563), but the image persisted in Andean art. Another doctrinal painting of this type depicts three monstrances — vessels used to hold up and display the consecrated host — commemorating a miracle that occurred in the Peruvian town of Eten, in which the three members of the Trinity became incarnate in the Eucharist **(FIG. 4)**.

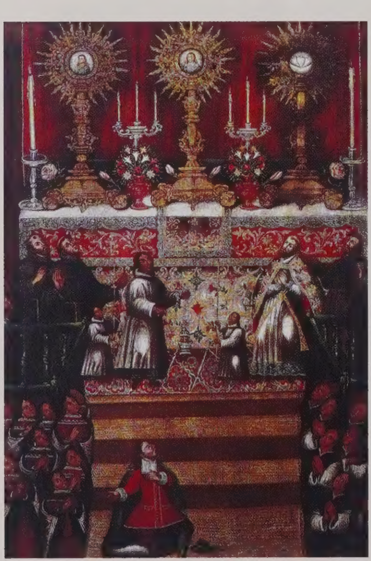

FIGURE 4. ***The Miraculous Appearance of the Son of God of Eten in Chiclayo,* Cuzco School, ca. 1649. Oil on canvas. Museo del Convento de los Descalzos, Lima.**

> "Andean painting, especially Cusqueñan painting, is radically different from other kinds of paintings."

As one can imagine, trying to teach a monotheistic religion, especially one in which the godhead is composed of three beings, to a polytheistic people would have been very complicated for the Spanish missionaries. Paintings like these instantiate doctrinal points; they are didactic. But because they typically take on interesting compositional forms and display a unique handling of color, which is distinct from Colonial paintings in Mexico or elsewhere, to modern viewers, they seem to border on Surrealism.

Statue paintings are another interesting subset of Andean religious art. Unlike images of the Trinity, these paintings are not doctrinal, but devotional; they are about making cult statues come alive.

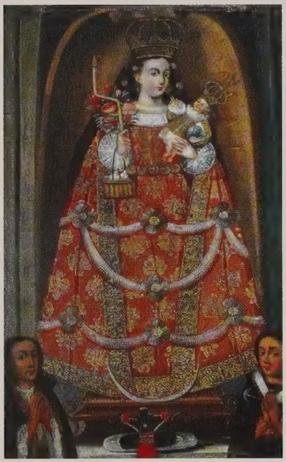

FIGURE 5. ***Painting of the Statue of the Virgin of the Candlemas with Donors,*** **Cuzco School, 18th century. Oil on canvas, 60" x 30". Private Collection.**

The dressed statues themselves, which are brought out for processions during *Semana Santa* or Holy Week, have a triangular corporeality, but the paintings make the statues appear alive.

My colleague Elena Phipps and I discovered a fascinating sculpture painting depicting the Virgin of the Candlemas and St. Rosa de Lima, a lay Dominican nun and the first American saint, in a private collection in Santiago, Chile **(FIG. 5).** The bottom of the painting was partially obscured by flowers, but when we removed the flowers, we saw the *mascapaicha*, the royal Inca crown at the Virgin's feet. So what we really see are two Andean descendants of the Inca in devotion before the Virgin of the Candlemas, who wears a silver Inca crown. Devotional works like this would have been kept in a private house as part of a family cult.

Another very popular and peculiar Andean image is the *ángel arcabucero*, which is based on early seventeenth-century prints showing angels carrying guns **(FIG. 6).** These paintings are a conflation of two genres: images of mustering troops **(FIG. 7A)** and the defense of the monstrance — the Eucharist **(FIG. 7B),** an important theme in Catholic art, not only in the Andes, but throughout the Catholic world. A monstrance is not an innocent object;

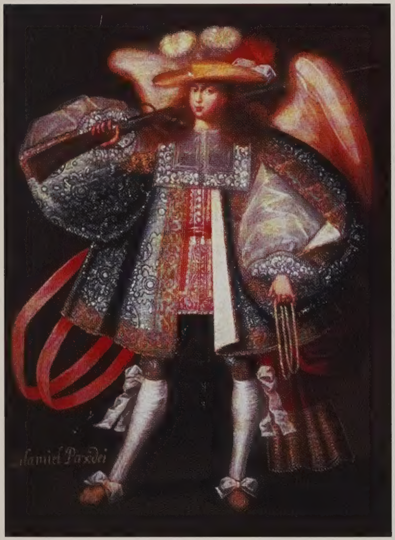

FIGURE 6. ***Angel with a Musket (Ángel Arcabucero),*** **ca. 1700. Oil on canvas.**

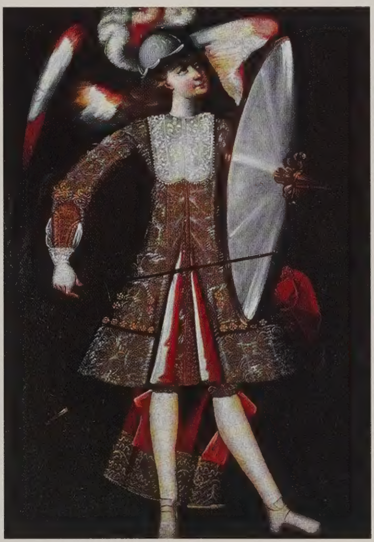

FIGURE 7A. ***Angel Mustering Arms,*** **18th century. Oil on canvas.**

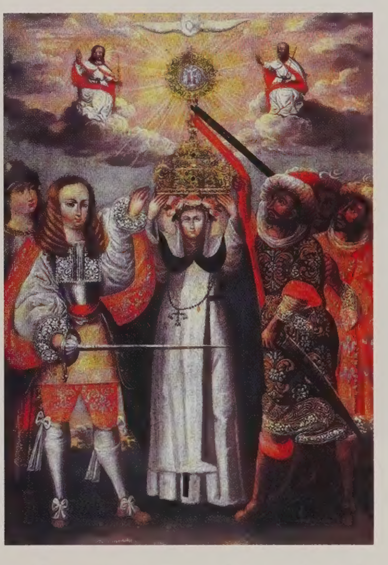

FIGURE 7B. ***Defense of the Eucharist by Charles II against the Turks, Held by St. Rose of Lima,*** **Cuzco School, mid-18th century. Oil on canvas. Museo Pedro de Osma, Lima.**

> "A monstrance is not an innocent object; it … contains the consecrated host … So when a monstrance is stolen, it is equivalent to stealing one of the most important liturgical objects in the Catholic Church."

it is an object that contains the consecrated host for which the mystery of the mass is said, and it is demonstrated to the believing public as it is carried through the streets on the feast of Corpus Christi. So when a monstrance is stolen, it is equivalent to stealing one of the most important liturgical objects in the Catholic Church.

A painting from 1680 **(FIG. 8)** depicts a Corpus Christi procession with a wagon bearing a statue of St. Christopher, the patron saint of one of the Indian parishes of Cuzco, being led by the head of the parish who is dressed as an Inca. Sadly, like monstrances, silver processional crosses like those depicted in the painting have largely been stolen out of Cuzco's churches.

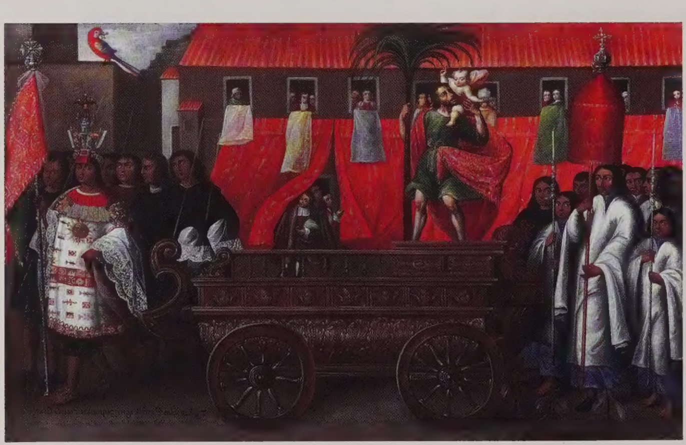

FIGURE 8. ***Corpus Christi Procession from the Parish of San Sebastian*, ca. 1680. Oil on canvas. Museo de Arte Religioso, Cuzco.**

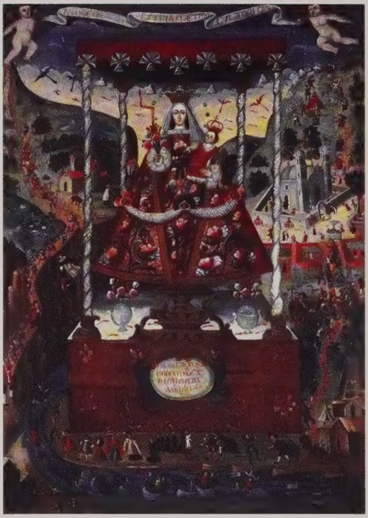

FIGURE 9. ***Our Lady of Cocharcas Under the Baldachin*, 1765. Oil on canvas, 78 ¼ x 56 ½". (198.8 x 143.5cm). Brooklyn Museum, Bequest of Mary T. Cockcroft, by exchange, 57.144.**

Paintings of miraculous images with pictorial representations of their histories are also extremely popular images because they meld devotional and popular religion. Images of the miraculous *Virgin of Cocharcas* **(FIG. 9)**, for example, typically show the cult figure in its baldachin, as it would be processed, while the miniature figures surrounding the Virgin depict the image's miraculous history.

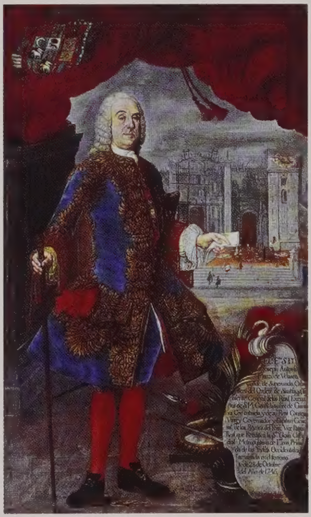

FIGURE 10. ***Portrait of Viceroy José Antonio Manzo de Velasco, Conde de Superunda*, 1746. Oil o canvas. Museo Historico, Lima.**

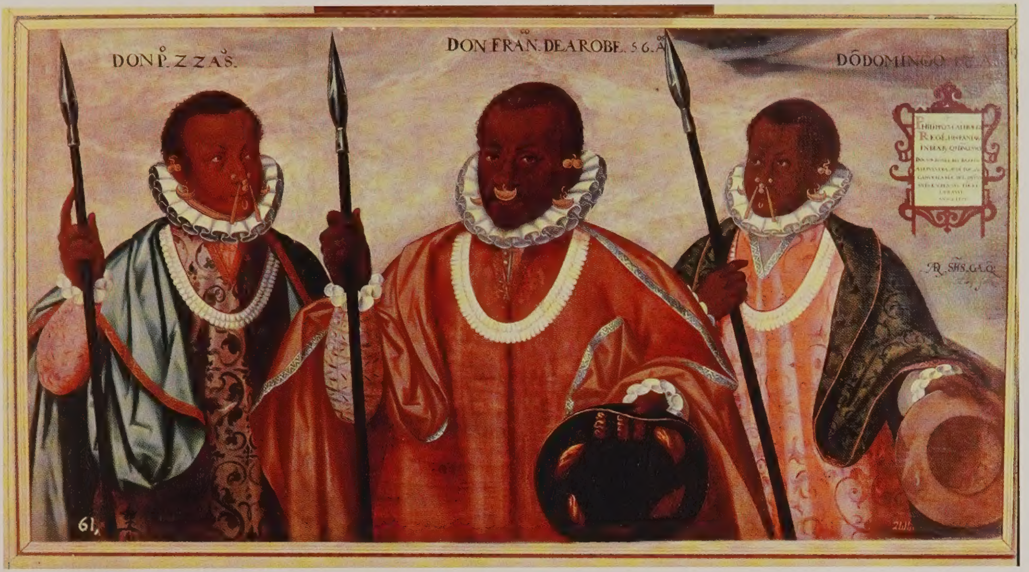
DON P. ZZAS.
DON FRAN. DEAROBE. 56.
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FIGURE 11. ANDRÉS SÁNCHEZ GALQUE, *Portrait of Don Francisco de Arobe and His Sons Pedro and Domingo (Los Mulatos de Esmeraldas)*, 1599. Oil on canvas, 36" x 69". Museo de América, Madrid. Photo Credit: Erich Lessing / Art Resource, NY.

There has always been a market for Colonial art, but viceregal portraits have never been as interesting to collectors as the religious images. This may be owing to the fact that Andean portraits, like this portrait of Viceroy José Antonio de Velasco **(FIG. 10)**, are modeled after Spanish official portraits, making them seem less exotic, which indeed they are.

Many of the works produced in the viceroyalty of Peru were *meant* to travel. One of these is the triple portrait of Francisco de Arobe, the cacique of the province of Esmeraldas in modern Ecuador, with his two sons **(FIG. 11 and Journal front cover)**. This painting, which is the earliest signed portrait painted by an Andean Indian, Andrés Sánchez Galque, was made for the Spanish Royal Collection and hung in the Alcázar Palace in Madrid, from which it later went to the Prado Museum. In the 1950s Generalissimo Franco ordered all of the American paintings taken out of the Prado and put with the anthropological materials in the Museo de America, where the painting remains today.

Other exotic Andean pieces were destined for the Royal Collection **(FIG. 12)**, including a portable writing desk made of *mopa-mopa* or *barniz de pasto,* a kind of varnish that was exported all over Europe. This desk carries the arms of Cristóbal Bernardo de Quirós, bishop of Popayán, who took it back to Spain with him in 1672–1684. It is important to realize that much of the material coming into the market is actually coming out of Spain, so that one cannot assume that everything purchased after 1970 was illegally exported from Latin America.

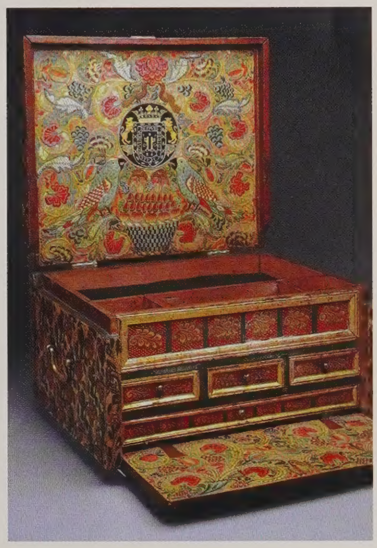

FIGURE 12. *Desk with Coat of Arms of the House of Quirós, 12th Bishop of Popayan,* ca. 1672, Colombia. Inlaid with mopa-mopa or barniz de pasto. Museo de Arte Colonial, Quito.

Similarly, many items that one might think were made and consumed locally were not. An Inca genealogy made after 1750 **(FIG. 13)**, depicting the Inca dynastic sequence with Atahualpa, the last Inca king, facing Charles V of Spain, was made in Cuzco for export to Lima. Amédee-François Frézier, a French military engineer whose book

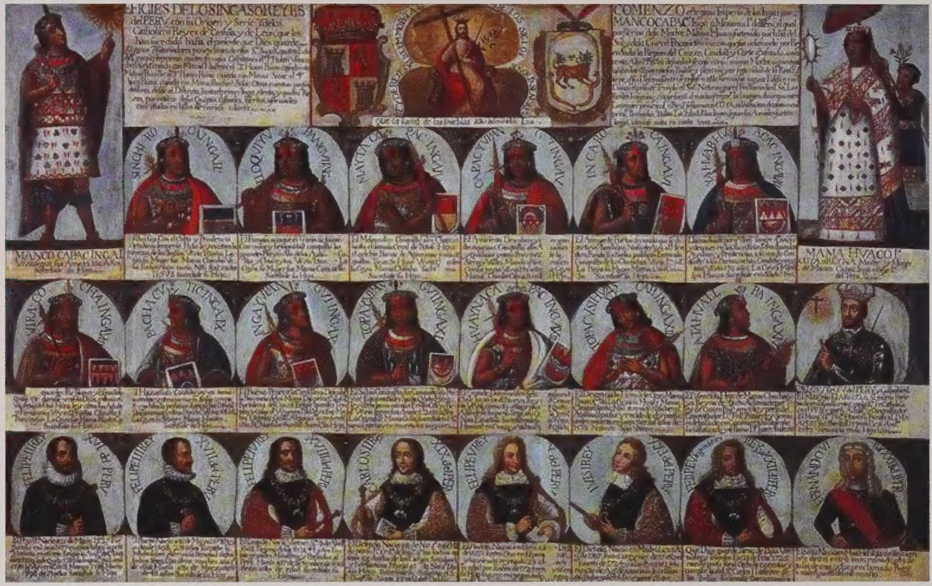

FIGURE 13. ***Genealogy of the Inca Rulers and their Spanish Successors,*** **Cuzco School, after 1750. Oil on canvas. Nuestra Señora de Copacabana, Lima.**

A Voyage to the South Seas is one of the most important travel books from the early 18th century,[1] also described a series of portraits of Royal descendants of the Inca that were painted in Cuzco for sale in Lima. Thus, these types of images were being circulated throughout Peru and in Europe as well. Interestingly, three paintings from about 1710, belonging to another set of portraits showing the royal descendents of the Incas, were bought in 1890 for the 1892 World's Fair in Chicago; we don't know where they are now.

In the early nineteenth century, however, even though Andean artisanal tradition continued, attitudes towards it begin to change. Whereas in the beginning of the eighteenth century, intellectuals such as Frézier copied Andean paintings, in the nineteenth century the French travel writer, Paul Marcoy, denigrated the local painters who continued the Andean artistic tradition. In one instance, Marcoy referred to an Andean artist as "Rafael de la Cancha," or Raphael of the Fields, because he was a peasant, making fun of him and his wife, whom he described as a shrew. This attitude toward Colonial art and artists coincided with a long period in which nineteenth-century Latin American paintings and Colonial paintings themselves were not collected at all.

Moreover, following an Inca uprising in 1781, images of the Inca were subject to destruction. Many were painted over. An early portrait of the Inca descendant *Francisco Sinchi Roca,* for example, was covered with a religious painting, which hid the portrait until modern restorations revealed the underlying image **(FIG. 14).**

Today, Colonial art is highly collectible, and although some paintings are simply too famous to sell, such as the *Virgin of Montserrat* from the Indian village of Chinchero **(FIG. 15),** the majority of Peru's Colonial paintings are anonymous. Works of art are not only disappearing from Cuzco, but from all over the Andean region. The road from

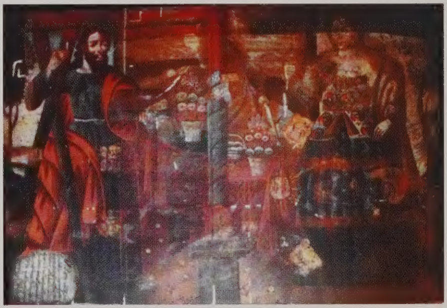

FIGURE 14. Painting of Saints Covering a *Portrait of Don Francisco Sinchi Roca* (repainting done after rebellion of Tupac Amaru II in 1781; original work visible when painting is turned counterclockwise 90°). Oil on canvas. Private Collection.

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[1] Amédee-François Frézier, *Relation du voyage de la Mer du Sud aux côtes de Chily et du Perou, fait pendant les années 1712, 1713 &1714* (Paris: Chez J- G. Nyon, E. Ganeau, J. Quillau, 1716).

> "It is important to realize that much of the material coming into the market is actually coming out of Spain, so that one cannot assume that everything purchased after 1970 was illegally exported from Latin America."

Potosí in Bolivia into Argentina is filled with small chapels that are, in turn, filled with Cusqueñan paintings. That is, they were filled; these churches are being looted as well. In many places, one can see a series of paintings where two, or even more works are missing. Not just paintings are being taken, however; *queros,* or painted goblets, are also highly collectible **(FIG. 16)**. Another type of object that is collected are small portable images carved in soft stone known as *piedra de huamanga,* such as the mid 17th century example showing the mass of Saint Gregory, which is typical of the region around Ayacucho **(FIG. 17)**.

Most religious art objects are still in active use by their communities. Andean artworks are stolen not only from museums or archaeological sites, as already noted, but from churches. Sculptures on the altar in the town of Paccaritambo, for example, come from a community outside of Pacaritambo and are brought together on the altar for a week.

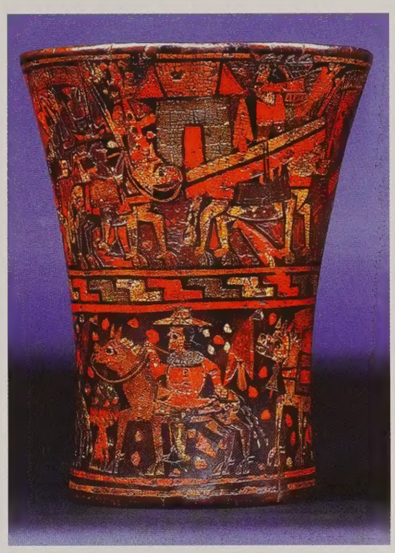

FIGURE 16. *Quero (Kero),* **18th century. Wood and Barniz de Pasto. Image shows logs being brought to Cuzco from the Lowlands. Collection, Museo Inka.**

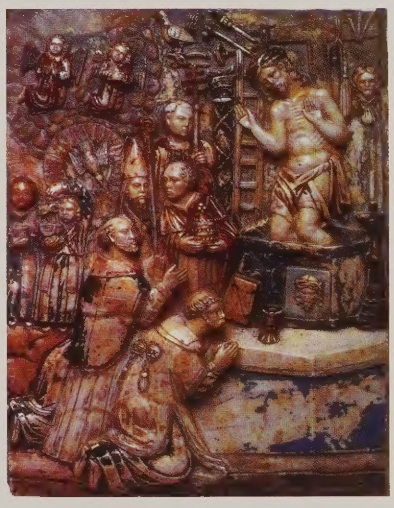

FIGURE 17. *Mass of St. Gregory,* **mid 17th century. Piedra de Huamanga (soft stone). Ayacucho region.**

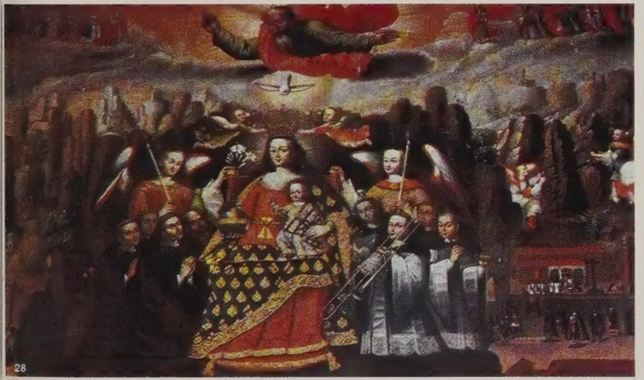

FIGURE 15. **FRANCISCO CHIVANTITO,** ***Virgin of Montserrat,*** **1693. Oil on canvas, 9" x 13". Church of Nuestra Señora de Montserrat, Chinchero, Peru.**

They represent the kin relationships amongst these communities. It is not the aesthetic value of the objects that is important, but their devotional and social value. This sense of kinship is what holds the Indian communities together and keeps them vital — still speaking Quechua, relating the objects to their ancestors and their past, and performing their own type of Catholicism. Slowly but surely as these objects are taken out of their communities, we begin to lose not only the devotional meaning of the images, but history.

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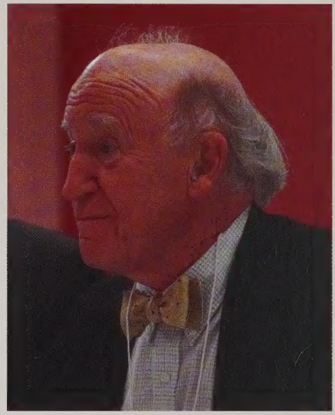
THE IFAR INVENTORY OF CUZCO CHURCHES AND ITS LESSONS

FREDERIC J. TRUSLOW*



In 1983-84, IFAR spearheaded a photographic Inventory of 2,491 paintings in the churches of Cuzco, Peru to protect them from theft. Ever since, IFAR has been part of the effort to put the Inventory to work. The quality of the art is extraordinary and its context is fascinating and vital — an active expression spanning three centuries of a community's beliefs through architectural spaces furnished and decorated intensely with paintings, sculptures, gilded frames, silver, and altarpieces. All this survives and is in use in a society with strong, traditional religious beliefs, but undergoing profound change.

A thirty-year look at this seminal project tells a lot about what an inventory can and cannot do to defend art from theft. An inventory is just organized information, a database. It is neither a magic wand to ward off thieves, nor the mark of possession like a flag asserting ownership, although both of these pieces of magical thinking have currency in the Andes and elsewhere. It has to be organized, and managed; people need to work together to get results. This talk is about trying to put an inventory to work.

THE MAKING OF THE INVENTORY

The IFAR project was born in July 1982 at a meeting of local leaders in Cuzco alarmed about thefts from the local churches. I had been Peru's lawyer in Washington for the recovery of stolen cultural patrimony and was on the way to see Machu Picchu with my family. The head of the National Institute of Culture in Cuzco encouraged me to attend. We all met; they bewailed the problem; and I said, "I'm a lawyer; I'll tell you, if you haven't taken a picture of the painting before it is stolen, you are never getting it back." And they said, "Yes indeed, let's do it, can you get us money?" Upon my return to the States, I called the only person I could think of who might help: Bonnie Burnham, IFAR's then Executive Director. She said okay, and IFAR made the Inventory happen — organized it, staffed it, and secured funding.[1]

The project had no frills. It was named the IFAR Emergency Inventory, was staffed with volunteers, and focused almost exclusively on paintings **(FIG. 1)**. Photographs were in black and white — almost entirely 35 mm, and there was minimal cat-

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* Frederic J. Truslow is a Consultant to IFAR's Cuzco Inventory. A retired attorney, he formerly represented the government of Peru. This article is an edited and updated version of the talk he presented at the *IFAR Evening* on October 22, 2012. Mr. Truslow previously published an illustrated article on this subject, "Putting the IFAR Cuzco Inventory to Work," in *IFAR Journal*, Vol. 4, no. 4/ Vol. 5, no. 1, 2001/02, which was later updated and reprinted (without illustrations) in, *Art and Cultural Heritage Law, Policy and Practice*, ed. Barbara T. Hoffman (New York: Cambridge University Press, 2006), pp. 109-113.

[1] The Samuel H. Kress Foundation, the Organization of American States (OAS) and some private donors gave a total of $47,000.

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aloguing information **(FIG. 2)**. Most of the artists were anonymous. Both the Church and the State in Peru participated, essential for any project of this kind. Afterwards, the index cards with photos that IFAR created were provided to the Archdiocese, which was to pass copies to the National Institute of Culture office in Cuzco and the parish priest of each church. It was their job, not IFAR's, to share the information as needed, and to put the data to work to prevent theft and increase the chance of recovery. We started the project with one focus: get the pictures taken. We didn't think perhaps as much as we should have about the long road ahead.

The Inventory was carried out by a team of cataloguers and photographers led by Humberto Rodríguez Camilloni, Robert Haboldt, and Samuel Heath. It documented 35 locations in three different areas:

- the large churches in the center of Cuzco;
- the Sacred Valley, which is to the North towards Machu Picchu; and
- South down the road towards Sicuani along the trade routes that joined the mercury mines with the silver mines.

These were all wealthy areas in the Spanish Colonial period.

In the center of Cuzco eleven churches and the Archbishop's Museum were inventoried, accounting for almost two thirds — 1,614 — of the paintings photographed **(CHART 1)**. These churches are richly decorated, well protected by strong religious orders, and losses have been relatively light. I would say 1-3%, but it is difficult to know exactly because these are independent orders. I am not sure that even the Archbishop can always get in to see what is going on. We have a remarkable collection of photographs — perhaps 200 or even 300 paintings per

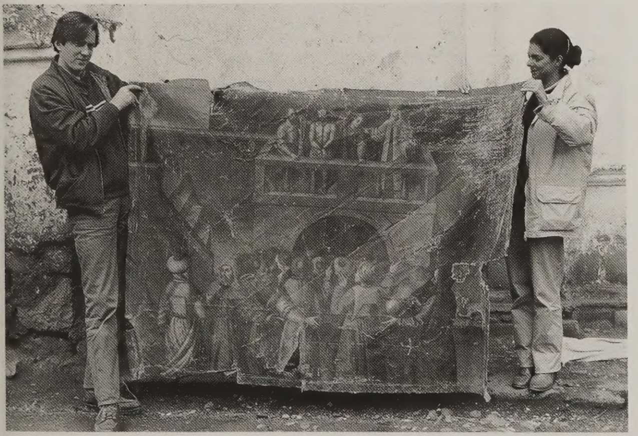
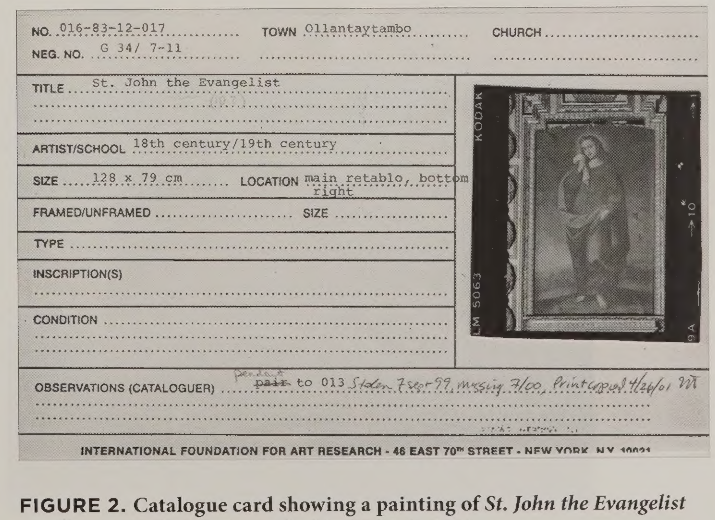


FIGURE 1. Two of the volunteer photographers crucial to the Inventory project.



NO. 016-83-12-017
TOWN Ollantaytambo
CHURCH
NEG. NO. G 34/ 7-11
TITLE St. John the Evangelist
ARTIST/SCHOOL 18th century/19th century
SIZE 128 x 79 cm
LOCATION main retablo, bottom right
FRAMED/UNFRAMED
SIZE
TYPE
INSCRIPTION(S)
CONDITION
OBSERVATIONS (CATALOGUER) ~~pair~~ pendant to 013 Stolen 7 sept 99, missing 7/00, Print copied 4/26/01

INTERNATIONAL FOUNDATION FOR ART RESEARCH - 46 EAST 70TH STREET - NEW YORK, N.Y. 10021

FIGURE 2. Catalogue card showing a painting of *St. John the Evangelist* in Ollantaytambo photographed by IFAR in 1983.

> "It is not easy to make a match, particularly when comparing an old black and white photograph of part of a punctured and water damaged canvas with a color portrait of the fully restored and modified work. …"

church — from relatively undocumented churches, such as La Recoleta and Santa Catalina. They are pretty inaccessible, which is probably the reason their losses seem to be light.

In the Sacred Valley, the Inventory documented about 600 paintings in 15 churches. This is a very different environment, changing rapidly as outsiders from Cuzco or Lima come in, buy land, start restaurants, hotels, and tourist attractions. I once saw on a swampy field next to the Vilcanota River an optimistic sign that said "Golf." Development may bring money, but it doesn't bring order, and it loosens social control. These churches are smaller and more vulnerable than those of central Cuzco, and have suffered many more losses **(FIG. 3).** The Archbishop's website of thefts (see text below and **CHART 2)** suggests losses of 24% in the 28 years since the Inventory, based on 11 of these churches where information of losses has been provided. If that pattern continues, there soon won't be anything left.

About 300 paintings were photographed in eight churches in the Sicuani area, southeast of Cuzco **(FIG. 4).** This area has less development and population inflow than the Sacred Valley. I spent a week there in October 2011. We found that in seven of these eight churches — we could not get to the eighth — 32 of the 270 paintings were missing, a 12% loss since 1983, alarming but less than in the Sacred Valley **(CHART 3).** These churches have also experienced serious losses of silver.

THEFTS AND RECOVERIES

The different rates of theft in the three areas show a clear correlation between "progress" and theft. Where you have strong religious order discipline, a solid community, closed doors, and insularity, there is better protection. This is a pity, because a shared dream is to have the world come and see these churches. Wouldn't it be nice if they were open to all? We want development; we want people to improve their lives; we want money to flow in. But that has aesthetic as well as social consequences — theft, loss and attenuation and disappearance of these remarkable unities of architecture and decoration. Some churches have experienced very few losses, while others have experienced many. The difference has to do with local discipline, which is eroding. Organized crime may also play a role, as some thefts show patterns of stealing six or eight paintings at a time. It is a terrible blow when that happens.

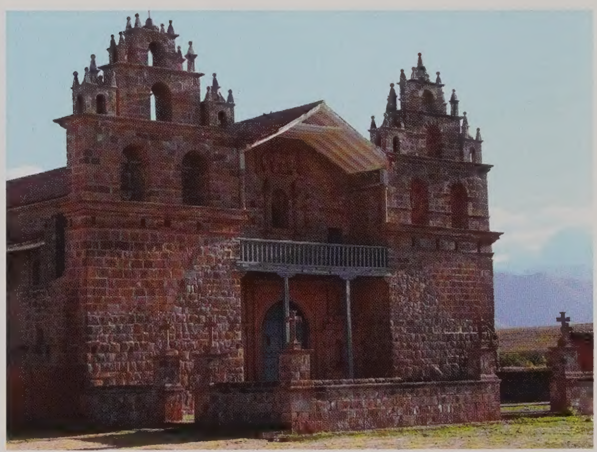


FIGURE 3. The Tiobamba Church on the ridge between Cuzco and Urubamba has lost almost all its paintings.

FIGURE 4. Townspeople, the parish priest, and cataloguers in Pitumarca in 1983. The man on the far right was there helping us in 2011 when we returned to check the church's contents.

Chart 1

Churches Inventoried in the Center of Cuzco
(August 1983, January 1984)

	Number of paintings photographed by IFAR
The Cathedral (partial)	29
San Blas	66
La Merced (Cloister and Museum)	90
San Sebastian (partial)	23
San Cristóbal	68
San Pedro	76
La Almudena (partial)	18
Museum of the Archbishop	241
Santa Catalina	322
San Francisco	271
La Recoleta	295
Santo Domingo	115
Total	**1,614**

These churches have not been reviewed by IFAR for subsequent losses. Anecdotal evidence suggests light losses (1-3%).

Chart 2

IFAR Inventory — Churches Inventoried in the Sacred Valley of Cuzco
(January 1984)

Number of paintings photographed by IFAR		Documented as missing on Archbishop's Website*
Chinchero - Monserrate	44	? (no web report on losses)
Urubamba - San Pedro Apóstol	43	? (no web report on losses)
Ollantaytambo - Santiago	36	17
Huayllabamba - San Juan Bautista	30	3
Yucay - Santiago Apóstol	73	5
Urquillos - Santuario Reina de los Ángeles	26	11
Tiobamba - Ermita de Tiobamba	12	8
Maras - San Francisco	64	17
Huanca - Nro. Señor de Huanca	66	? (no web report on losses)
San Salvador - San Salvador	36	? (no web report on losses)
Pisac - San Pablo	19	8
Taray - La Magdalena	45	7
Coya - San Juan Bautista	13	1
Lamay - Santiago el Menor	26	7
Calca - San Pedro Apóstol	50	10
Total	**583***	**Unknown losses**
Total excluding churches with no web report	**394***	**94* = 24% losses**

*A very high level of theft and loss has occurred in the churches of the Sacred Valley of Cuzco. The number of losses in each church is taken from the Archbishop's Website, www.obrasustraidas-cusco.org, as of May 19, 2013. The Site reports, uncharacteristically, no losses in four of the churches.Because the author has observed losses in these four churches, however, he believes that loss reports were not submitted for these churches on the Website, and thus excludes them in estimating an over-all loss rate of 24%.

Chart 3

Churches Inventoried Southeast of Cuzco
(August 1983)

Number of paintings photographed by IFAR		Missing as of Feb. 2011
Checacupe - La Inmaculada	73	0
Combapata - San Nicolás	21	5
San Pablo - San Pablo	17	0
San Pablo - Virgen de Belén	19	9
Tinta - San Bartolomé	66	2
Pitumarca - San Miguel	42	2
Maranganí - San Martín	33	14
Tungasuca - Hanaypampa	23	not reviewed
Total	**294**	**?**
Total — reviewed churches	**271**	**32** **12% losses**

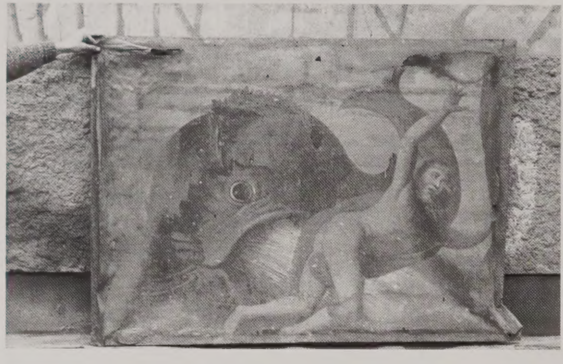


FIGURE 5. ***Jonah and the Whale,*** **missing from St. James the Lesser Church in Lamay.**

> "IFAR feels very pleased about three recent recoveries made possible by its Inventory, and that all three paintings have now been returned to Peru by U.S. Homeland Security."

The IFAR Inventory contains photographs of at least 130 paintings that have since been stolen and not recovered. Some of the works are amazing. Take as an example, a 4 by 5 foot painting of *Jonah and the Whale,* taken from the church in Lamay **(FIG. 5).** This is a variant on a line of Jonah and the Whale pictures deriving from German engravings. If you see this piece, please let me know.

IFAR feels very pleased about three recent recoveries made possible by its Inventory, and that all three paintings have now been returned to Peru by U.S. Homeland Security. They include a Saint Thomas Aquinas **(FIG. 6)** and a Saint Anthony Abbot **(FIGS. 7 and 8),** both of which were stolen from the Mary Magdalene Church in Taray in the Sacred Valley, near the well known market town of Pisac. I filmed these two paintings in situ in the main altarpiece of the church in the year 2000. They disappeared sometime after that. In general, the date of a theft is important; for example, to show that the works could not have entered the United States before 1997, when importation of Spanish Colonial paintings from Peru was prohibited unless accompanied by an export permit.[2] In this case, however, the IFAR Inventory provided independent proof that the works were actually stolen and not just illegally imported into the U.S., and they could be recovered on that basis, so the date of entry into the U.S. was not as crucial.

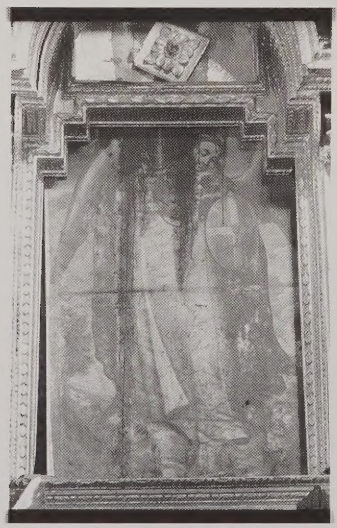


FIGURE 6. ***St. Thomas Aquinas,*** **photographed in 1984 and later stolen from Mary Magdalen Church, Taray.**

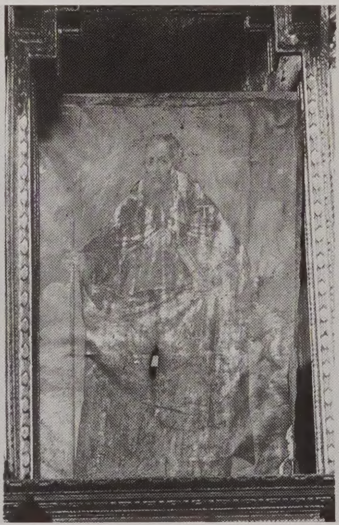


FIGURE 7. ***St. Anthony Abbot,*** **photographed in 1984 and later stolen from Mary Magdalen Church, Taray. Note holes and water damage.**

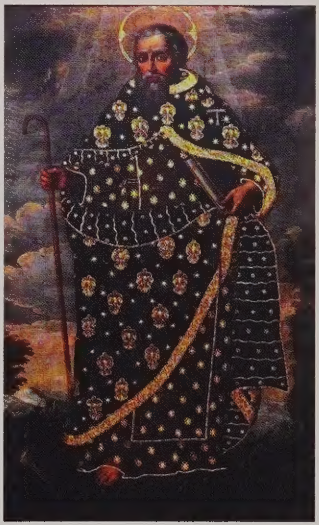
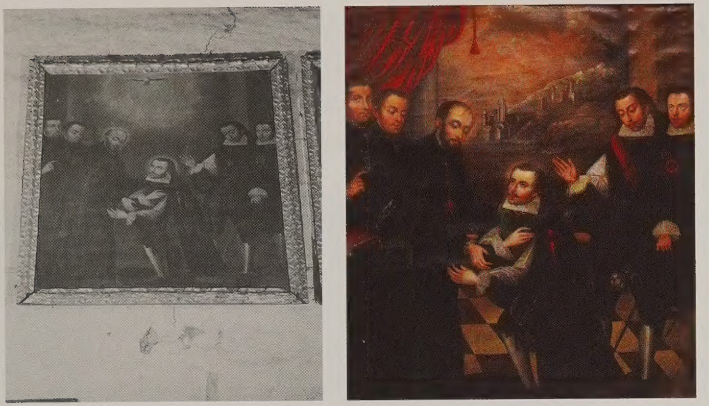


FIGURE 8. ***St. Anthony Abbot*** **as offered for sale by an Austin, Texas auction house in March 2009.**



FIGURES 9 A and B. (A) ***St. Ignatius Loyola*, oil on canvas, 67 ¾" x 60" (172.1 x 152.4 cm), as photographed in 1983 in the Church of St. Martin of Tours, Maranganí, Peru and (B) the same work, restored, as offered for sale by an Austin, Texas auction house in March 2009.**

These two paintings, together with a stolen *Saint Ignatius Loyola* **(FIGS. 9A and B),** also inventoried by IFAR, were among 14 offered in Internet sales via Texas auction houses, which came to the attention of the Peruvian Ministry of Culture. The recoveries were successful because of good documentation and energetic cooperation from all participants **(FIG. 10).**[3] Only the IFAR Inventory had photographs from Taray, and after IFAR made the Inventory available to them in digital form, both the Archdiocese of Cuzco and the central office in Cuzco of the National Institute of Culture alertly identified the works. It is not easy to make a match, particularly when comparing an old black and white photograph of part of a punctured and water damaged canvas with a color portrait of the fully restored and modified work, as was the situation with these three works. Key to confirming the match were the repairs on the back of the restored canvases, which corresponded exactly with the holes and tears visible in the Inventory photographs.

The *St. Ignatius* had been taken from the church in Maranganí, down past Sicuani, actually the farthest south of the churches we inventoried. When the Jesuits were expelled from Peru in 1767, a number of their paintings ended up here. Twenty-three of these paintings were inventoried by IFAR in 1983, of which ten, including this *St. Ignatius*, were subsequently stolen. One of the others was recovered in Bolivia in 2001. It is worth mentioning that the *St. Ignatius* had contained a depiction of the Holy Spirit in the form of a dove, but it was painted over after the theft and replaced with a perhaps more marketable cityscape. Various other modifications were also made, perhaps in hopes of persuading people that it was a different painting. Fortunately, the experts were not deceived, but the painting has been damaged. I suppose the dealer or consignors involved would claim that the changes were done tastefully.

The great majority of the stolen works inventoried by IFAR are still missing. Among the most popular and frequently stolen paintings are the *arcabuceros* **(FIG. 11),** angels carrying muskets, which seem to be irresistibly attractive to thieves and their customers, as so many have disappeared. Only a few are left in the churches, but it is unwise for me to say where.

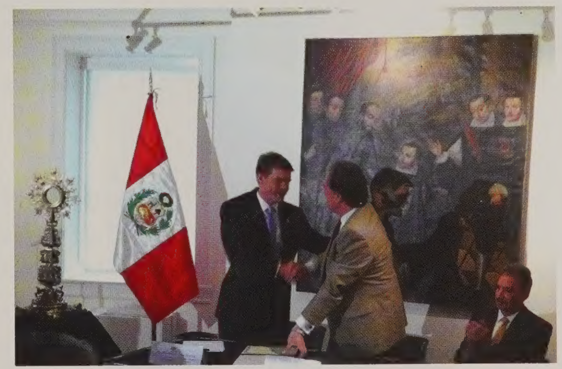


FIGURE 10. Ceremony at the Peruvian Embassy in Washington in July 2012 repatriating the *St. Ignatius Loyola* (in background) along with a dozen other Peruvian items. Photo: S. Flescher.

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[2] The U.S. signed a Memorandum of Understanding (MOU) with Peru in 1997, under the U.S. Cultural Property Implementation Act, restricting the importation into the U.S. of designated types of cultural items at risk of pillage. This included paintings of the Spanish Colonial period.

[3] The *Saint Ignatius Loyola* was returned to Peru in a ceremony at the Peruvian Embassy in Washington in July 2012, and the *Saint Thomas* and *Saint Anthony Abbot,* although seized earlier, were returned to Peru in May 2013.

IMPEDIMENTS TO COOPERATION

Experience shows that this great body of vulnerable art will be better protected, and more easily recovered if stolen, if included in a comprehensive photographic inventory that has been shared between the Church, the relevant state institutions — the Peruvian Ministry of Culture and the Police — and concerned members of the community. The IFAR Inventory was a first step toward that goal. But it has proven difficult to get all the needed players to cooperate. Each of the three principal stakeholders, Church, State, and local community, believes that it is the true owner and protector of the objects in the churches, yet lacks the resources and organization to do the job alone, and does not easily work with the others.

Each bishop has the legal title and the duty to preserve the property of the Church, but has few resources and is primarily concerned with the moral and physical welfare of the parishioners, slow to change or adopt new technology, and hesitant to share information about its collections. A Papal Commission gave strong support in 1999 for the use of inventories, but the Church is very decentralized in property management and bishops and their policies may only change at twenty-year intervals.

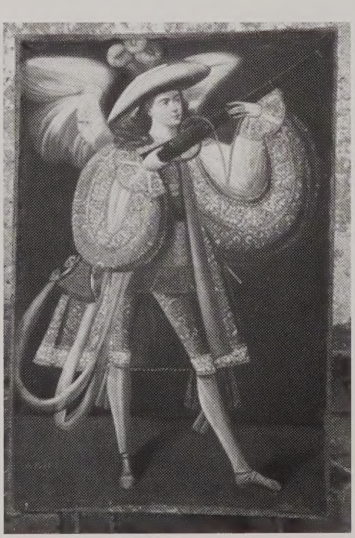


FIGURE 11. ***Archangel Arcabucero*** **stolen from St. Francis of Assisi Church in Maras. Musket-bearing angels are catnip to crooks.**

> "... the St. Ignatius had contained a depiction of the Holy Spirit in the form of a dove, but it was painted over after the theft and replaced with a perhaps more marketable cityscape."

The Ministry of Culture is by law responsible for national patrimony, and occasionally claims to be in charge of religious artifacts, but its funding and expertise is spread very thin. The Cuzco regional office of the Ministry enjoys the benefits of mining and tourist revenues, particularly from Machu Picchu, and has greater resources than the central office in Lima. As is natural in a government and bureaucratic situation, everybody wants a share of the funding for culture, and so there is competition for the money and the attention — from dance groups, folk artists, chefs, and others, all in addition to the caretakers of the monuments and heritage that are the subject of this *IFAR Evening.* The situation is occasionally complicated by a political preference for what some consider the true indigenous culture, the Pre-Columbian, as opposed to the Colonial conquerors associated with the Church. To the extent that the Church acts to defend or protect its art, the local office of the Ministry may step back, though it has an extensive program for restoration of paintings. There is little trust between the Ministry's local office and the Church, and it is not uncommon for each to accuse the other of condoning thefts.

The third stakeholder is the local community, passionate first line defenders of their sacred totems **(FIG. 12)**. The traditional Andean communities operate through elaborate hierarchical structures. The *economo*, the sacristan, and the *mayordomos* who guard and sleep in the church **(FIG. 13)**, and hold its keys, believe deeply that these works are sacred to them and they rise up with passion if they feel them threatened. The first Inventory work we did south of Cuzco in 1983 triggered a riot that had to be resolved by the Archbishop himself. Moving the art to a museum may work in France or Germany; it is not an option in Peru. The paintings and ornaments are integral parts of religious rites; the churches are in active use, and are often only accessible during mass.

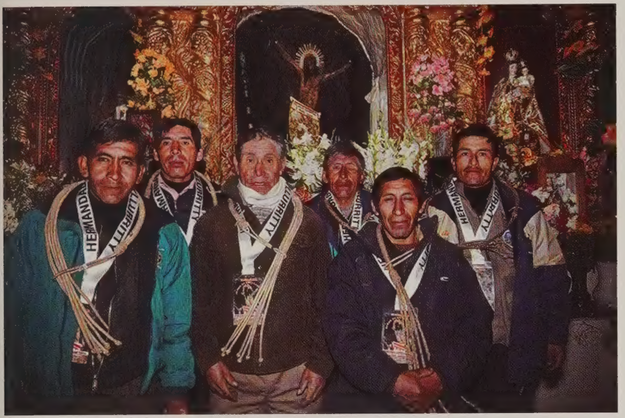


FIGURE 12. An expression of community spirit protecting sacred places: the brotherhood that guards the Qolloyoriti Festival. Photo © Angie Keller, with permission.

The Church and State tend to undervalue the role of the community, and have too often looked down on the non-Spanish speaking, uneducated original population, excluding it from power. Still, these are the descendants of the people who created or donated the works of art, and who do the day to day work of guarding the churches. If there are thefts, they are likely to be inside jobs, and the thieves can best be caught by the community. It is essential to include community leaders in any system of protection. They will be cooperative, and an essential source of initiative, if included and treated fairly. But once the artwork is in a truck and heading for higher value markets abroad, there is little the community can do to chase it.

The logical defenders of law and order, the National Police, are often seen as socially inferior or corrupt by the Church and State, and abusive by the community. These stereotypes are often unfair, but impede cooperation. Complicating matters, outsiders such as IFAR, for all their good intentions, are not organized to provide the sustained, continuous support needed to carry a complex program through long periods of learning and adaptation to a distant goal.

Is it quixotic to try to put the power of information sharing to work in this difficult environment? Theory holds that sharing a piece of data increases its value, and that the increase goes up exponentially the more sharing occurs. The other point of view, prevalent in the mountains of Peru, is that "You're probably a thief, and if we let you have a picture of our painting, you'll probably steal it." So the question becomes how to bridge the gap between the obvious advantages and logic of an orderly system of comprehensive and shared data to rapidly identify, intercept, and recover stolen works, and the social conflicts, suspicions, traditions, and limited resources that block sharing and collaboration. This is the central challenge.

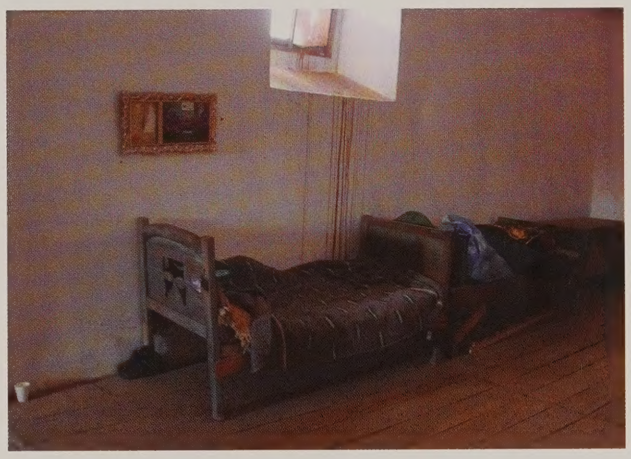


FIGURE 13. The guardian sleeps in the church (Maras, 2009).

Peru's Ministry of Culture's central office in Lima, acting through its Office of Fiscalization and Control, led by Dr. Blanca Alva, understands this challenge, and has greatly increased recoveries of cultural patrimony, more than 2,750 works in the last six years. We all know the extraordinary power of the computer to help us find almost anything. It is becoming increasingly possible for a country, or a large organization like the Catholic Church, to keep track of its collections and intercept illicit sales of previously documented works. But it takes organization, collaboration, and some funding, and that's the rub.

> "A particular accomplishment of the Archdiocese is its website (www.obrasustraidas-cusco.org), which lists and shows missing works organized by church and by category—such as paintings and sculptures."

THE INVENTORY'S COURSE: STEPS FORWARD AND BACK

These difficulties are reflected in the history of the use and non-use of the IFAR Inventory. Once the communities understood that the cataloguers were defending and not raiding their churches, photography went smoothly in the three campaigns between August 1983 and August 1984. But some in the church organization feared that the information collected would become a catalogue for thieves, and continuity was lost when a new Archbishop was appointed just as the cataloguing was being completed. When the photos and index cards for the first two campaigns of the Inventory were delivered by IFAR to the church's lay director in 1985, they disappeared and were never seen again, except for an intriguing incident mentioned below.

Even so, the IFAR Inventory got the ball rolling by carrying out what was at the time the largest inventory in Cuzco. The National Institute of Culture (INC) had already begun photographing and cataloguing the contents of the churches, and was stimulated by IFAR's work on the paintings to do a parallel catalogue of silver and statuary. When the Church failed to share the IFAR material with the INC, the INC commendably went forward anyway, expanding its efforts so that by 2005 it had inventoried 10,000 works in 120 churches. It was a big job, and a very important one, because that inventory, along with the IFAR Inventory, has made it possible to compare the status of the churches at different times and identify lost works.

In the early 1990's inventory work was impeded by the Shining Path terrorist insurgency that convulsed Peru. That was not a good time for field trips, nor for recovery of stolen art. It was good for thieves, however, and a lot of art was stolen in those years. Throughout this time the Archdiocese did not permit the INC to photograph in the churches of central Cuzco, and consequently the INC also did not share its photographs with the Archdiocese.

Hard times for the inventory effort turned much better with the arrival of a new Archbishop, Msr. Juan Antonio Ugarte, in 2004. He is an engineer and a practical man, and saw that non-cooperation contradicted Vatican policies, and it did not make sense. Thanks to his efforts, an agreement was signed between Church and State in 2004 under which joint teams of cataloguers updated all of the old inventories and covered some 50 additional churches, sharing the data and photographs. In 2007, supplementing the 1985 deliveries noted above, I provided the INC and the Archdiocese complete scans of the photographic index cards of the IFAR Inventory. By now, thanks to the hard work of his cataloguers, led by Architect Liliana Saldívar, 14,000 works in 170 churches, probably 90% of the content of Cuzco's churches, have been catalogued, in much greater detail that that early simple, black-and-white IFAR Emergency Inventory.

The IFAR Inventory is still directly useful because there are some places, such as Taray, where it provides the only record of works now lost to theft. But its principal significance is, I think, that it gave impetus to the process of doing a comprehensive inventory. The technology has moved way beyond where we were then. Low cost color photography and, now, digital cameras are standard. Not only have many more works been photographed and catalogued, but the Archdiocese has organized the data and photographs into a computerized database.

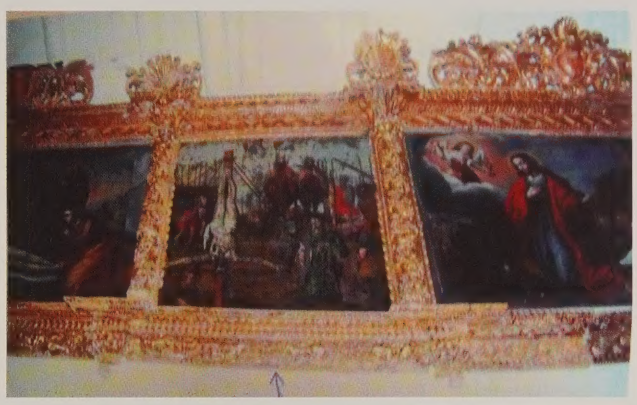
A particular accomplishment of the Archdiocese is its website (www.obrasustraidas-cusco.org), which lists and shows missing works organized by church and by category — such as paintings and sculptures. It is not that easy to navigate and requires knowledge of Spanish, but one can search church by church to see what's missing, at least in the churches where the analysis has been updated. Importantly, the Archdiocese's database is accessible to the public, without the need for a password. This is an important step toward creating a protective, shared database, although it needs to be kept up and expanded over time. As far as I know, no other such website exists in Peru.

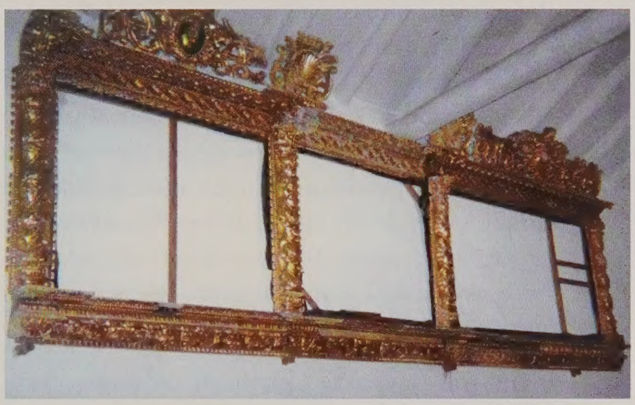
THE CASE OF OLLANTAYTAMBO

How an inventory is key to the recovery of stolen art works is illustrated by the 1999 theft of seven paintings from the church in Ollantaytambo. This is perhaps the best preserved Inca city in the Sacred Valley, and the church, nicely restored, stands at the base of the enormous staircase-like fortress that is the most prominent site one sees before going down the valley to Machu Picchu. When I visited in 2000 to see what use had been made of the IFAR Inventory, I gave a copy of the Inventory to the *economo,* as I had in other towns, thinking that each community should know what was in its church. Seven paintings had been stolen from the church the previous year.

One year later, in the Bolivian capital of La Paz, the Bolivian police, in a rather embarrassing incident reflecting strained relations between Peru and Bolivia, raided an apartment shared by a French art dealer and the Peruvian Cultural Attaché, and confiscated over 200 Spanish Colonial paintings and artifacts. News reports circulated in the Cuzco area, and the *economo* and *mayordomos* of Ollantaytambo recognized several of their paintings. Armed with their copy of the Inventory, they took their case to the Archbishop and the INC, and, when they got little results, went to the Bolivian government in La Paz.

This is the great strength of the community representatives; they insist and beat on the door. They care about their works, and chase them. I am told that as a reward for their insistence, the officials in La Paz responded, "All right, you get four of your paintings, but that's all you are going to get." Evidently someone didn't want to give up the rest, but at least the four were returned. The good people of Ollantaytambo are still fighting for the other three, and we hope that continued pressure will bring more recoveries **(FIGS. 14A and B).**





FIGURES 14 A and B. The Church of St. James the Apostle, Ollantaytambo, has lost 17 of its 36 paintings since the Inventory in 1984. Four were recovered from Bolivia in 2002 thanks to the IFAR Inventory. **(A: top)** three paintings were in situ in 1998; **(B)** only two years later, all three were missing.

Three additional paintings from other churches were also recovered at that time, all identified by the IFAR Inventory, one of these from the Jesuit collection in Maranganí (from which the *St. Ignatius Loyola* mentioned above was also stolen). Someone must have consulted the index cards provided to the Archbishop's office in 1985 that were purportedly "lost." If Ollantaytambo had not raised the clamor it did, probably these paintings would not have been returned either. These seven paintings were the only ones given back by Bolivia to Peru from the 200 seized in the apartment of the cultural attaché, clearly showing that it takes the combination of photographic proof plus persistent follow-up to achieve a recovery from a reluctant possessor. Bolivia's position, naturally, was that all the works were of Bolivian origin unless proven otherwise. That a flood of smuggled art flows from Peru to La Paz does not change this presumption, and all too few stolen works have had an inventory photograph to prove their origin.

NEEDED NEXT STEPS

One clear lesson from the Ollantaytambo case is that we need more photographic inventories. Cuzco's churches are well documented, but Cuzco is very unusual. Many areas of Peru don't have any church inventories, and some of the churches have almost no paintings, sculptures, or silver left. But it's very important to get out into the field and document what still is there. Moreover, many private photographic collections exist, some of which are extensive, which could document lost works. Such documentation would make a wonderful field project for university students. They would have a great experience and do something very useful. The opportunity exists to organize this activity to a greater extent than has been done before.

There is also a need to consolidate the fragmented existing documentation into a single, comprehensive Colonial art database, whose primary function would be to determine whether any particular work of art has been stolen, and pinpoint its history and ownership. This opens the door to communicating with owners and dealers, and also with those who want to help in the recovery of a stolen work, creating a way to find the work, and a trigger for the follow-up necessary to detach it from the holder. It is not practical for the owner or prospective buyer of a work to consult multiple small databases; he or she simply can't or won't do it. The Peruvian government, other countries with similar colonial heritages, and the Church all have a strong interest in creating a single comprehensive service to answer these questions, hopefully an interest strong enough to overcome any institutional and traditional resistance to mutual cooperation. They need to invest the necessary resources despite the pull of other priorities.

> "It has proven difficult to get all the needed players to cooperate. Each of the three principal stakeholders, Church, State, and local community, believes that it is the true owner and protector of the objects in the churches ..."

The Ministry of Culture in Peru, as part of its excellent program of art recovery, has taken a useful first step, a blog (mc-dgfc.blogspot.com) providing information about recent thefts, which is sent out in a system of virtual alerts to embassies, subscribers, and others. A natural next step would be for the Ministry to establish a comprehensive database that would permit it to answer questions and gather information about whether particular works are stolen and their whereabouts. Such a project is currently under consideration.

But even if all the churches were inventoried and the information well shared, Peru would not be able to defend and recover this vulnerable heritage unless the National Police could be fully integrated into the plan of defense. Major bottlenecks occur when church officials report thefts to the police, who have to certify that a theft has occurred. Only then can official recovery action be taken by the Ministry of Culture or Foreign Relations if the work is found outside Peru. But, the police aren't always trusted, and admitting thefts can be embarrassing and even dangerous. A police report is not easy to obtain, especially where police stations are scarce and ill manned, the theft happened long ago, or an earlier filing has been lost. At times, the police accuse the local guardian reporting the loss of being the thief. Thus, many thefts go unreported. It is a weak point in the system, because if a theft isn't reported, the State doesn't act.

Part of the solution may be to establish a special police unit dedicated to art theft, perhaps following the model of Italy's Carabinieri. Such a unit, working with the Ministry of Culture, could improve the procedures for issuing police reports and find a way to place all stolen and missing works on the INTERPOL stolen art list, which is authoritative and distributed worldwide. Currently, very few Peruvian works are being listed with INTERPOL because of the difficulty of getting an official police theft report, yet this would be the logical place to house a list of missing art works.

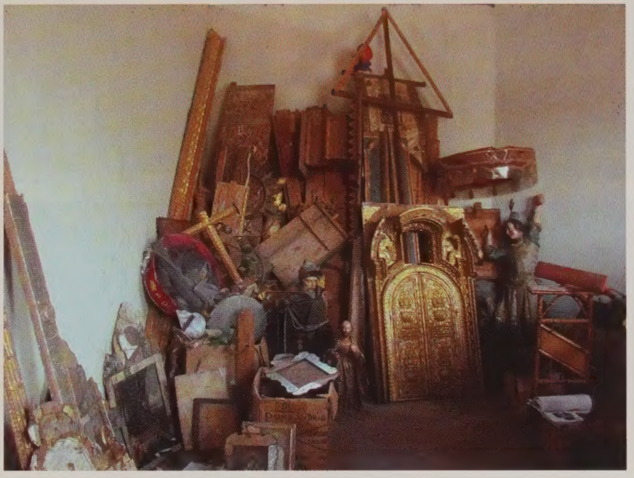
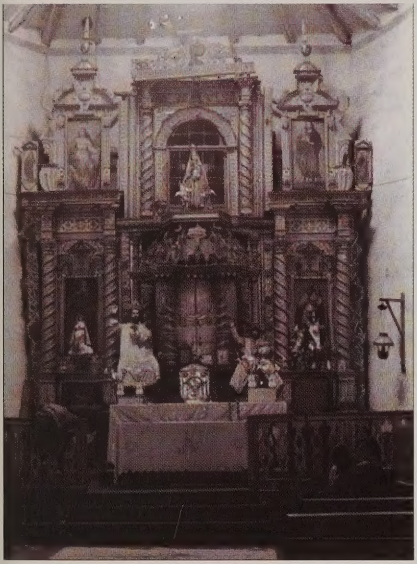


FIGURE 16. **Despite an Inventory photograph, too many pieces of the altar of the Virgin of Bethlehem Church in San Pablo are missing for it to be restored.**



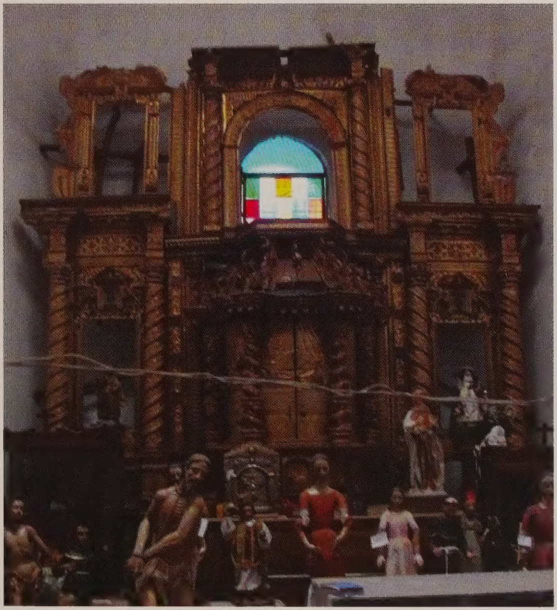


FIGURE 15 A and B. **The principal altar in Lamay was restored in 2007 (B: bottom), and the only photograph showing its earlier state (A: left) was from the IFAR Inventory in 1984.**

An inventory such as IFAR's has the ancillary benefit of providing a record of a church's past. We photographed the altarpiece of the church of Lamay, for example, as part of the Inventory project in 1984 **(FIGS. 15A and B).** In 2007, it was taken apart as part of the church's reconstruction, but they neglected to photograph it before disassembly, so we provided them with a picture to help them put it together again. Some altarpieces, however, cannot be restored; the Virgin of Bethlehem Church in San Pablo also has an Inventory photograph, but too many pieces have been lost **(FIG. 16).** That altar is, I'm afraid, a goner.

Sometimes the sad job of the Inventory is only to provide information after the loss. In July 2012 there was a large theft from the church of Combapata, 196 silver objects, including a monstrance **(FIG. 17).** We had inventoried these works and may have the best pictures of anyone. But with silver, the risk is that the thief will simply melt it down, so, perversely, good information may encourage destruction of the piece.

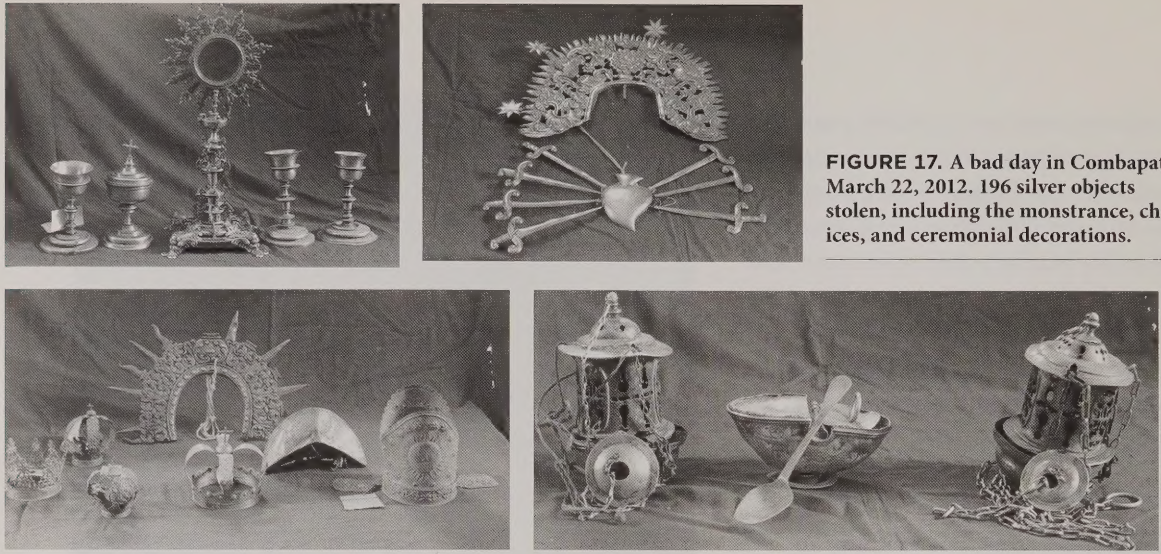


FIGURE 17. A bad day in Combapata, March 22, 2012. 196 silver objects stolen, including the monstrance, chalices, and ceremonial decorations.

BEYOND INFORMATION

While this article focuses on the IFAR Emergency Inventory and others and the considerable opportunities that exist to strengthen the defenses against theft through information collection and sharing, it would be wrong not to mention the need for physical improvement and for strengthening of the churches and restoring the collections. Most churches are modest adobe structures with wooden doors and tile or even straw roofs. You can break into some of them with a crowbar, as happened in the Combapata silver theft. The Inventory photographs of the recovered paintings from Taray, marked with water damage and punctures, suggest that there are as many works being lost from deterioration as from theft. Churches need new roofs and windows, repairs, padlocks, grills, and alarms, as well as telephones for their guardians. Paintings should be marked with hidden tags, "brilliant pebbles" or the like. In areas where there is electricity, remote or laser alarm systems may be useful. These improvements are often costly, church-by-church projects, but they are a necessary complement to the information-based protections suggested by our Inventory experience. The Ministry of Culture and its predecessor INC have restored many churches over the years, but more funding is needed.

* *

A base has been laid, in Cuzco and in the Ministry of Culture in Lima, for an integrated, effective response to the problem of theft in Peru, but there is a long way to go. Think again about those glorious, unified church interiors, fully decorated, shining with gold, interior decorated every inch. The Archbishop of Cuzco once said to me that his goal was to have all the works be as impossible to steal as the *Mona Lisa*. Even though the *Mona Lisa* was itself stolen — in 1911 — his goal is the right one. Part of the solution is to build a digital barrier — comprehensive photographic inventories combined with technology and follow up organization — to prevent thefts and support recoveries. An interior like the one in this church **(FIG. 18)**, which reflects the living culture of the Andes, is why we should care.

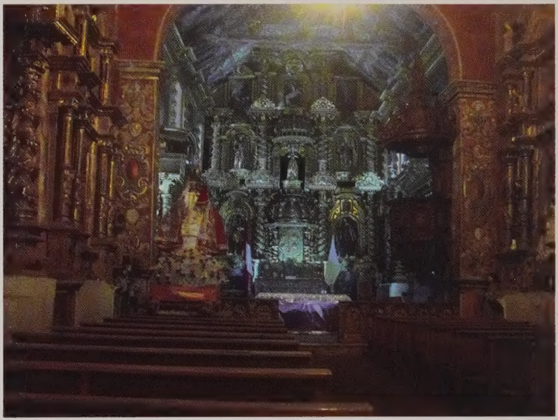


FIGURE 18. Why should we care? This extraordinary, unified and lavishly decorated church interior shows why.

• • •

HOMELAND SECURITY INVESTIGATIONS

THOMAS MULHALL[*]

The cultural art and antiquities program of Homeland Security Investigations (HSI) in New York, which I supervise, is an eclectic program, requiring us to be a Jack of all trades and master of none. None of us is an expert in this field, but we do have expertise in customs law.

You may be asking, "Why would Homeland Security be involved in cultural property cases?" The answer is that this is a legacy responsibility. U.S. Customs was responsible for investigating crimes involving the illicit importation and distribution of cultural property, art and antiquities before that agency was merged into the new Department of Homeland Security in 2002.[1] The Customs laws, I believe, are the strongest set of U.S. laws to prosecute these cases and to seize and forfeit stolen works.

The United States is one of the three premier markets for cultural property, along with the United Kingdom and Japan, although we are seeing an increasing number of cases where the customer base is in China. The major source countries are:

- **Mediterranean / North Africa:**
  Egypt, Greece, Italy
- **Middle East /Asia:**
  Afghanistan, China, India, Iran, Iraq, Israel, Pakistan
- **Southeast Asia:**
  Cambodia, Thailand
- **Latin America:**
  Belize, Bolivia, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Peru

Latin America, including Peru, is a source area of major concern. This is big business; INTERPOL estimates that the illicit trade in cultural property is third only to weapons and narcotics trafficking.

The criminal organizations we are seeing are of two types: 1) Smaller operations of 3-4 people — we call them mom and pop organizations — found where the point of sale is involved in the actual looting or recovery; 2) Highly organized international networks, who keep the illicitly obtained items off the public market until either the search for them subsides or sufficient provenance can be established by moving them through smaller auction houses in areas that are not policed strongly.

Presently, there are approximately 250 HSI Special Agents trained in cultural property investigations in 26 offices throughout the United States. (We call them Special Agent in Charge offices — SAC.) The training — regarding investigative techniques, handling, storage, photographing, and authentication methods — takes place at the Smithsonian Institution in Washington, DC. Homeland Security, the Department of State, the Smithsonian Institution, INTERPOL, and the Department of Justice all take part.

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[*] Thomas Mulhall is Supervisory Special Agent, Department of Homeland Security (HSI), New York. He has been in federal law enforcement since 1998, working for Customs and Border Protection (CBP) and the U. S. Park Police prior to becoming a Special Agent for U. S. Customs in 2002.

[1] The Department of Homeland Security has the delegated authority to enforce import restrictions under the Homeland Security Act of 2002 and Treasury Department Order No. 100–16.

Briefly, I will discuss the relevant laws used in our investigations, with the caveat that I am not an attorney and that I tend to side with law enforcement, so I will paint a rosier picture than may actually be the case. In a cultural property investigation, especially in New York, one or all of these laws will be invoked by a member of my group:

- Entry of Goods by Means of False Statements — 18 USC 542
- Smuggling Goods into the United States — 18 USC 545
- National Stolen Property Act — 18 USC 2314
- U.S. Cultural Property Implementation Act — 19 USC 2601 — 2613

Entry of Goods by False Means is a law that in essence is as old as the Customs Service itself,[2] and it is a very good law for the government. It states that:

> "Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties; …"

"By means of any fraudulent or false invoice … or by means of any false statement …" means the merchandise need not be stolen. If you have legitimate title to a painting and it is coming from outside the country, and you misstate it on a Customs declaration and it gets called into question, it could be seized by Customs. Lastly, not to paraphrase the law, but there need not be a loss in duty to the United States; artwork is duty free. In fact, it raises a red flag for law enforcement when someone misrepresents the importation of artwork for which there is no duty, as there is no reason *not* to report it to us at the border.

The second law, 18 USC 545, governs a more serious and harder to prove offense, smuggling. It, too, has knowledge (scienter) elements; you must knowingly, willingly, and with intent to defraud the United States, smuggle items into the country:

> "Whoever knowingly and willfully, with intent to defraud the United States, smuggles, … any merchandise which should have been invoiced,
>
> — or —
>
> Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, (knowing the same).
>
> Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section."

An important takeaway about this law is the phrase "any merchandise contrary to law." People are often confused; when Customs and Homeland Security act on an investigation, people want to know what U.S. law has been broken, but in smuggling you do not have to break a U.S. law. The U.S. will enforce foreign "criminal law" as it relates to smuggling. Although 18 USC 545 states "*any* merchandise contrary to law," subsequent legal decisions have held that violations of foreign export licensing regulations do not qualify. Theft or similar frauds, however, do qualify.

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[2] Its origins lie in the Administrative Tariff Act of 1789 — 1 Stat. 29 — July 31, 1789.

[3] "Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud." (NSPA), 18 USC 2314

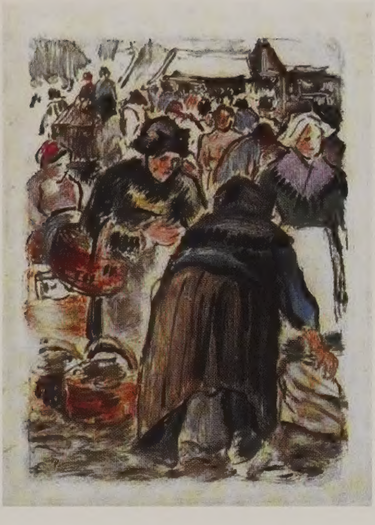

FIGURE 1. CAMILLE PISSARRO, ***Le Marché aux Poissons*. Monotype on paper. 8 ½" x 6" (20.6 x 15.2 cm). Stolen from a museum in France in 1981 and forfeited by a good faith purchaser in 2011.**

Thus, if a painting is stolen in Peru and someone attempts to import it into the U.S., it can be seized, even if the importer was uninvolved in the crime and despite the fact that the U.S. has no jurisdiction over the people and property involved in the original crime. This puts the onus on the importer.

The National Stolen Property Act (NSPA), 18 USC 2314, is another great tool in these investigations.[3] This law also has a knowledge requirement that isn't always there. We are frequently asked why don't we arrest anyone in these cases. It is because we are often dealing with someone three or four steps removed from the actual theft. These are innocent owners who purchased an item, and in a new climate, the work gets new scrutiny. This was the situation with a Pissarro painting in a recent case called *United States v. The Painting Known as Le Marché*[4] **(FIG. 1)**. On appeal, the Second Circuit (in New York) upheld the lower court decision saying that the current owner, Sharyl Davis, had to forfeit the painting because it had been stolen in France and then imported into the U.S. about 20 years before she attempted to sell it at Sotheby's.

I'm not experienced in the art world, but I don't know how you overcome that. I don't know how somebody making a purchase would be able to determine with certainty that a painting was never stolen and never smuggled in recent history.

Another law is the CPIA, the Cultural Property Implementation Act, of 1983, particularly, sections 2601–7. It is not as old as the Customs laws, we enforce, and it is not as strong. Affidavits can be produced to overcome the enforcement of sections 2601–6. Section 2607 is the strongest and basically states that if the object in question was ever inventoried, in a museum or religious or secular public monument, or similar institution, it can be considered stolen property. That is why what IFAR has done (with the Cuzco Inventory), and what's being done with other databases to document items is very important, because this section of the law is very difficult to enforce without a photograph or some prior inventory before the object's importation into the U.S.

"If a painting is stolen in Peru and someone attempts to import it into the U.S., it can be seized, even if the importer was uninvolved in the crime. … This puts the onus on the importer."

Lennis Barrois is the HSI Special Agent who worked on the case of the monstrance that was offered at auction in New York in 2010. Our office initiated the investigation with the Department of Justice in the Southern District of New York. This case was successful only because the monstrance had been inventoried, as the importation wasn't recent. We didn't encounter the monstrance at the border; we didn't have much in the way of provenance when the case was initiated. The fact that the object was in an inventory really helped.

Another Special Agent in my unit, Brent Easter, who is also here this evening, worked on a case a few years ago involving an 18th-century Peruvian manuscript that was hand-carried by a passenger into Houston Airport **(FIG. 2)**. A Customs and Border Protection officer in Houston, acting on an investigative lead from our ICE HSI agents in New York and also Peruvian officials, identified a passenger who had a record for possession of stolen papyrus manuscripts and also multiple trips to Peru. During baggage inspection, the CBP officer found an old book in the passenger's possession and detained it to determine its value and origin. The manuscript was undocumented, and, initially, we had no idea where it came from. But, it turned out that the Jesuits had in fact inventoried it, and the book was identified by a professor at Fordham University. We later received confirmation that the manuscript had been stolen from the Recoleta Library in Araquipa, Peru. It was forfeited and then returned to the Peruvian government in a ceremony in Washington in May 2011. This is another example of the importance of documentation. Had the book not been inventoried, we probably would not have been successful seizing and ultimately repatriating it.

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[4] *United States v. The Painting Known as "Le Marché,"* No. 1:06-cv-12994 (RJS) (S.D.N.Y. July 2, 2009), *aff'd, United States v. The Painting Known as "Le Marché,"* No. 10-300-cv (2d Cir. 2011).

I would like to end this discussion by providing contact information for a few HSI cultural property and antiquities investigative officials in New York and Washington:

- Thomas Mulhall, Supervisory Special Agent
  646-313-2732
  Thomas.Mulhall@dhs.gov
- Brenton Easter, Special Agent
  646-230-3492
  Brenton.M.Easter@ice.dhs.gov
- Lennis "Duck" Barrois, Jr., Special Agent
  646-230-4373
  Lennis.M.Barrois@ice.dhs.gov
- Debbie Hardos, National Program Manager
  Washington DC
  202-732-0363
  Debbie.Hardos@dhs.gov

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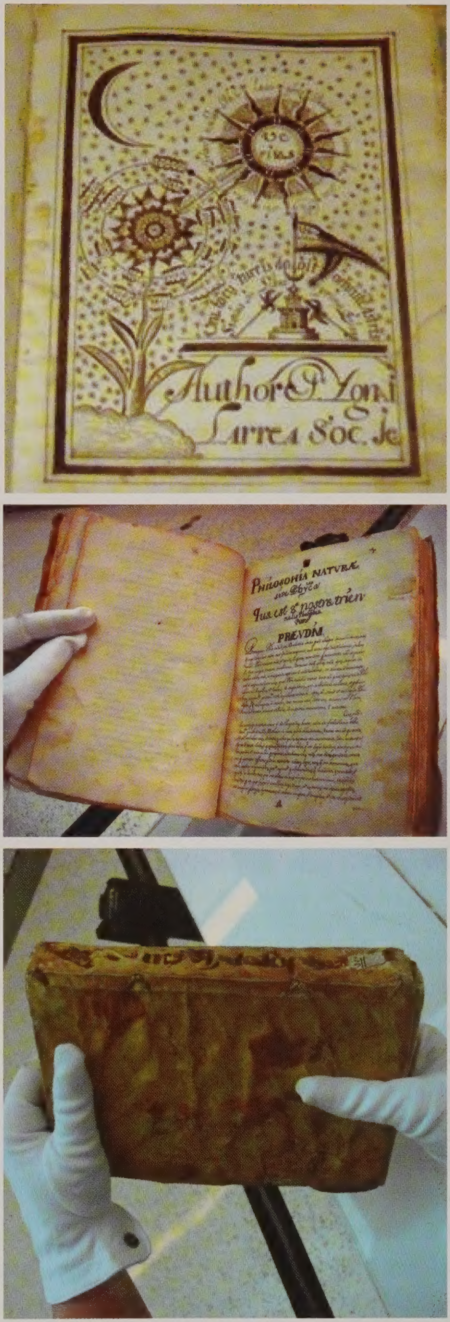

FIGURE 2A, B and C. **18th century Peruvian manuscript stolen from the Recoleta Library and later forfeited and returned to the Peruvian government.**

IT'S NOT JUST MACHU PICCHU: RECOVERING PERU'S SPANISH COLONIAL HERITAGE

Q & A

Q To Thomas Mulhall, what is the most compelling case that you have ever come across?

A THOMAS MULHALL (TM): There's an investigation in the Eastern District of New York [since completed] that we've titled Operation Mummy's Curse. This is a case that my colleague Brent Easter worked on regarding the smuggling of an Egyptian sarcophagus and other objects into the United States **(FIG. 1)**. It took a tremendous amount of effort, but in that investigation the looter, the importer, the restorer, and the collector were all identified and indicted. Three were arrested; one person, a dealer based in Dubai, is still a fugitive.[1]

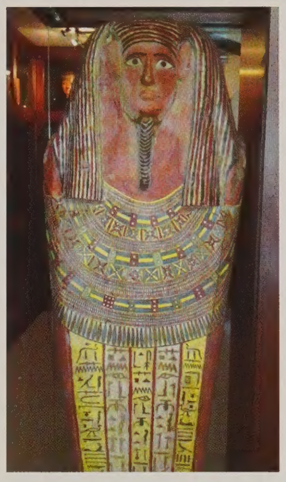

FIGURE 1. Smuggled Egyptian sarcophagus recovered by Homeland Security's U.S. Customs and Border Protection (CBP).

Q Regarding the monstrance that was recently recovered (see Quesada, p. 19, **FIG. 1**), could you discuss its trajectory from the sale at Christie's to its seizure by Homeland Security and eventual return to Peru?

A LENNIS BARROIS — Homeland Security (LB): I was the Case Agent for the Peruvian monstrance case, which I can discuss because it is closed. Often we take action when people in the community question works of art displayed in auctions and museums. With the monstrance, the Department of State notified us in December 2011 that they saw it at a Christie's auction in September of the same year, and we initiated an investigation. As Thomas Mulhall, my supervisor, said, Homeland Security has a lot of authority under Customs statutes. Once the object makes entry into the United States, we have a right to know what happens to it. We can exercise our authority to get information from the auction houses, which are usually cooperative. In this case, we had to determine who the consignor was and to find out the history of the piece. An expert looked at it, and we met with a few other people to verify that it was the same monstrance that had been taken from Peru. Usually at this stage, we let the owners know that they are in possession of a stolen object, and that if they move it they could be arrested. In this case, after the expert verified that it was one and the same monstrance, all parties agreed to do the right thing and the work was handed over to Peru at a ceremony in Washington, D.C. in July 2012.

A FREDERIC J. TRUSLOW (FT): I would like to add that I was with the expert who came from the Archbishop of Cuzco's office to examine that work. The identification was done on the basis of an inventory, not the IFAR Inventory, but two different early photographs of the work. Together, these two early images provided enough information for a very careful analysis. The monstrance had been disassembled; consequently, the position of the pieces was different. The star at the top was the same, but repairs had been made. Mistakes or defects should be noted in the original work, and one should look for patches or repairs in the same place as in the earlier picture. This monstrance is also instructive in showing the kind of information a good inventory will contain. Clearly, it is important to take pictures of small details, because people may change a big thing, but they may not change small details, which may be enough to ascertain where it came from.

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[1] Two pled guilty. One entered into a deferred prosecution in January 2013. *U.S. v. Khouli, No. 11-340 (E.D.N.Y. Khouli* case unsealed July 14, 2011).

Q Do any of the statutory regimes that you described for the recovery of stolen art have private rights of action, or are they all statutes that require the intervention of law enforcement? In other words, whereas the RICO Act (18 U.S.C. § 1961) allows for a private individual to file a lawsuit against people who have engaged in racketeering, can a private person bring a lawsuit against a gallery owner whom they suspect is involved in the illegal trafficking of art?

A **TM:** Not that I'm aware of, but that is not something that we would be involved in. It would make sense that civil litigation could occur, but I have not been involved in any of those cases.

Q How could you tell that the recently recovered monstrance had in fact been stolen and not just sold to fix the roof?

A **FT:** The Archbishop of Cuzco, who is in charge of that church, did not have a document showing that it had been sold; moreover, everybody testified that it was stolen. The monstrance simply disappeared. Actually, it disappeared in two stages; first the lower pedestal disappeared; then, years later, the star at the top disappeared. So it appears that somebody had held onto the base waiting for the moment to get the top, and waiting again before joining the two pieces and putting the monstrance on the market. This was a well thought out theft.

A **THOMAS B. F. CUMMINS (TC):** The community will usually say whether an object is stolen. Moreover, when the local priest does sell something from the church, that decision is usually agreed on by the community. Such consensus, however, does not mitigate the issue of whether it is a legal sale, since the artworks belong to the Archbishop, and not necessarily to the parish church. But this question is often beyond the point since the object is leaving the country illegally.

A **TM:** Even if the work had been sold, Homeland Security is still able to enforce the law at the border. This is similar to financial investigations. When people have money, even if it is lawfully obtained, they will not want to disclose this to the government and will deposit it in smaller amounts. And that's why the charge of entry by false means, or smuggling, is so useful, because it is after the fact. The individuals may have good title, but they still had that moment when they brought it in to the country without declaring it.

> "The monstrance … disappeared in two stages; first the lower pedestal disappeared; then, years later, the star at the top disappeared. This was a well thought out theft."
>
> — *Frederic J. Truslow*

LENNIS BARROIS = LB
THOMAS B. F. CUMMINS = TC
THOMAS MULHALL = TM
FORTUNATO QUESADA = FQ
FREDERIC J. TRUSLOW = FT

Q If someone has Pre-Columbian objects or Colonial Peruvian paintings that have been in a family for many years, but there is no documentation showing how the works left the country, how aggressive will the government be in going after these items?

A **FT:** If the object entered the United States after 1997, it is violating the U.S.–Peru Bilateral Agreement under the Cultural Property Implementation Act, prohibiting the importation of designated categories of objects, including Colonial religious art and many Pre-Columbian objects. Consequently, if that type of object has entered the United States after that date without export documents, it has probably entered illegally.

Q What about a statute of limitations? Why didn't it matter regarding Peru's claim against Yale?

A **TC:** That was a different issue. An agreement had been signed. Hiram Bingham, who "discovered" Machu Picchu in 1911, had signed a letter saying that the works were leaving the country with the understanding that they would go back. Yale was under a contractual agreement to return the objects; the letter was in Yale's own archive. It wasn't that the pieces left the country illegally; it is that they didn't go back as they should have.

FT: There *is* a statute of limitations on contracts. In the Machu Picchu case, Peru's demand came 100 years later. But in the eyes of public opinion, it wasn't decent for Yale to rely on that particular argument.

Q I think I heard you say that the Customs law that prohibits importing objects into the United States in violation of law, includes *any* law, even of a foreign country, not just United States law, so, if there was a law in a foreign country, for example, that prohibited the export of a particular antiquity, or in this case Colonial painting, are you saying that U.S. Customs could seize the object because it is being imported into the United States in violation of the export law of that country? And if you are saying that, what is your precedent?

A **TM:** No, we don't enforce the export laws of foreign countries.

> "Even if the work had been sold, Homeland Security is still able to enforce the law at the border."
>
> — *Thomas Mulhall, Homeland Security*

Q But you did say that the relevant clause is: "imported into the United States in violation of law," and you said that includes the law of a foreign country, but I have never heard that before. Maybe that's true, and I would like to know whether that is an enforcement policy of U.S. Customs at this point. And if so, what is the requirement of clarity; must the law have been translated? Must it be available in English?

A **TM:** My understanding is that we do not enforce export restrictions. We will enforce foreign 'criminal law' as it relates to smuggling. Theft or similar frauds qualify.

> "[Peru's claim against Yale] was a different issue. … Yale was under a contractual agreement to return the objects; the letter was in Yale's own archive. It wasn't that the pieces left the country illegally; it is that they didn't go back as they should have."
>
> — *Thomas B.F. Cummins*

A AUDIENCE MEMBER: John Merryman, Professor Emeritus at Stanford Law School, has written some articles differentiating between illegal export and theft. What you are referring to is the National Stolen Property Act. The United States has taken the position that if the patrimony law of a foreign country is a law that prevents anyone from taking the artifact or artwork out of the country or transferring ownership because the law gives ownership of the object to the country, it creates a circumstance where the export without permission is theft.

The McClain cases[2]— the first case decided on this issue — established the position that the United States would interpret the removal of art from a foreign country in violation of its patrimony law as being violative of the U.S. National Stolen Property Act. This is what happened in the Frederick Schultz case.[3] However, if the removal is merely in violation of a foreign country's export law, which applies across the board to any commodity, we do not enforce those laws unless there is a treaty between the United States and the foreign country. That goes for art and Nigerian gold, and across the board.

A FT: One interesting distinction between Colonial art and Pre-Columbian objects in Peru, which may also apply in Mexico and maybe elsewhere, is that the McClain case was based on the exporting of Pre-Columbian objects, which are typically found buried in the ground. There is an old, very strong principle of law in the civil law countries called the Right of the Sovereign to what is inside the ground. This principle has led to a rule that everything that is dug out of the ground belongs to the State. That rule was applied in the McClain case to stretch the idea of theft, so that if someone illegally took a buried object out of the country, you could get it back on the basis that it had been stolen from the State. That doesn't apply with church art because it was never dug out of the ground and it was privately owned, whether it was in a church or a hacienda. That is why we have treaties specifying which things can and cannot be exported from the country.

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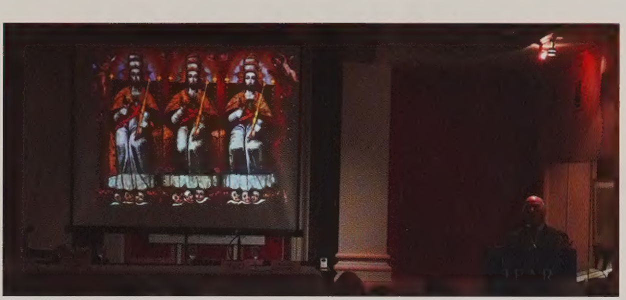
[2] *United States v. McClain (McClain I),* 545 F.2d 988 (5th Cir. 1977), *reh'g denied,* 551 F.2d 52 (5th Cir. 1977); and *United States v. McClain (McClain II)* 593 F.2d 658 (5th Cir. 1979), *cert. denied,* 444 U.S. 918 (1979).

[3] *United States v. Schultz,* 178 F .Supp 2d 445 (S.D.N.Y. 2002), *aff'd* 333 F.3d (2d Cir. 2003); *cert. denied,* 540 U.S. 1106 (2004).

SCENES FROM AN IFAR EVENING

ON RECOVERING PERU'S SPANISH COLONIAL HERITAGE

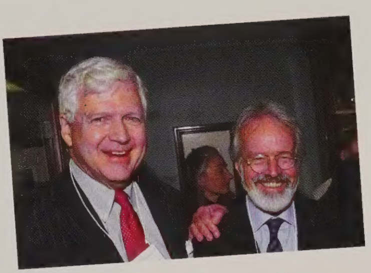


Thomas Cummins makes a point.

Frederic Truslow and Angela Greenman.

Herbert Hirsch and John Cahill.

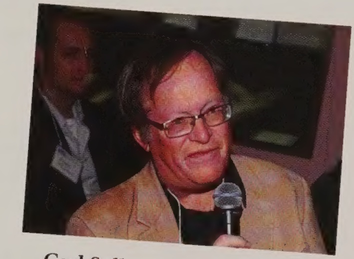
Roberta Huber and Richard Aste.



Stanley Stillman (left) and Heinrich von Staden.

Thomas Cummins, Elena Phipps, and Diana Fane.

Robert Simon and Nancy Harrison.



Carl Soller asks a question.

Frank and Frederic Truslow.

Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

ANATOMY OF AN ART STING

An *IFAR Evening*, December 10, 2012

EDITOR'S NOTE:

The success of an art sting is measured in the recovery of an artwork and apprehension of the criminals involved. Stings can be risky undertakings, however, both to the undercover operatives and to the artwork; they often require months, even years of careful planning. In December 2012, before a full audience at the Scandinavia House in New York, IFAR hosted an Evening featuring five distinguished speakers — all of whom had been involved in art stings — discussing the risks, the planning and the legal underpinnings of a successful sting. Two of the speakers — Charles Scribner III and Robert Wittman — incorporated videos into their presentations. Below are the edited proceedings of the talks and the Q&A that followed. IFAR would like to thank Christie's Fine Art Storage Services (CFASS) for its partial support of this fascinating program

SPEAKERS IN SEQUENCE:

CHARLES SCRIBNER III
Author: *Rubens* and *Bernini*

BRENTON EASTER
Special Agent, Department of Homeland Security, New York

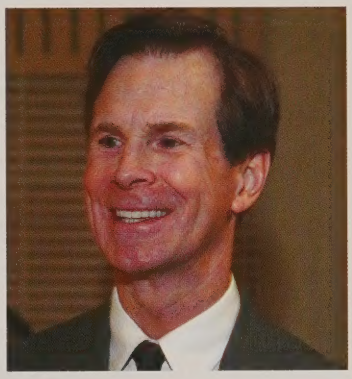
CHRISTOPHER A. MARINELLO
Executive Director and General Counsel, The Art Loss Register

ROBERT K. WITTMAN
Former Senior Investigator and Founder, FBI's National Art Crime Team

ROBERT E. GOLDMAN
Former Federal Prosecutor and Legal Advisor to the FBI's National Art Crime Team

RUBENS MEETS MIAMI VICE: THE ART OF THE STING

CHARLES SCRIBNER III*



I would like to tell you about the greatest adventure of my life. I am hoping that one of the other speakers will sign me up for a sequel.

We begin on the coast of northern Spain, in the town of La Coruña, whence the Armada set sail centuries ago. Its Tower of Hercules, the oldest lighthouse in the world, is 2,000 years old **(FIG. 1)**. On September 16, 1985, this was the site of the almost perfect crime. Picture the scene: broad daylight, the local museum, the very under-staffed Museo de Belas Artes, only two people on duty, no real security. In walks a man wearing a trench coat carrying a screwdriver.

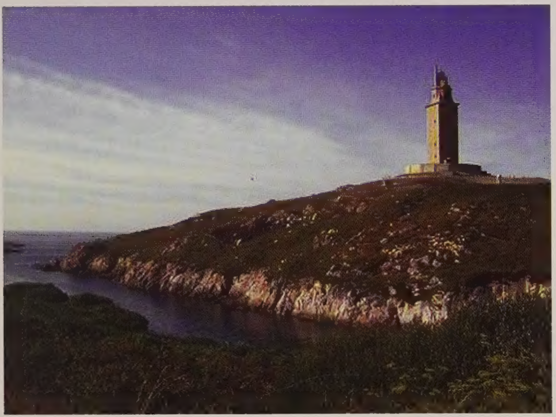


FIGURE 1. La Coruña, Spain.

Now, the crown jewels: two oil sketches by Peter Paul Rubens, prince of painters and painter of princes, twice knighted, by the Kings of Spain and England. The two works, *Daedalus and the Minotaur* and the Roman goddess *Aurora*, are small, six inches by ten inches **(FIG. 2)**. Before the end of the day, the security guard makes his rounds and sees they are gone **(FIG. 3)**. There are no fingerprints, no clues, no traces, nothing. The theft is reported to IFAR.

More typical Rubens paintings, like the Medici Cycle at the Louvre, are much larger and more difficult to steal. They are also not entirely by Rubens, who had a big workshop of assistants. But the two little gems from the Coruña museum are 100% Rubens.

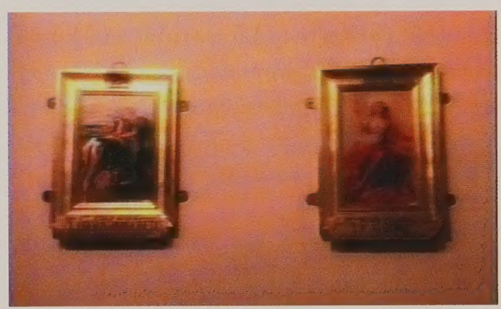


FIGURE 2. The wall at the Museo de Belas Artes showing the Rubens paintings *Daedalus and the Minotaur* and *Aurora*.

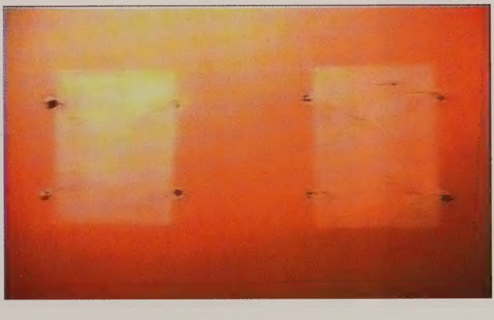


FIGURE 3. The empty wall at the museum after the theft.

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* Charles Scribner III, Ph.D., is an art historian of the Baroque period and the author of *Rubens* and *Bernini*. He is a former publishing executive at Scribner. His talk included a video excerpt from the BBC-Bravo documentary *The Rubens Robbers* [2003].

Four months after the theft, in January 1986, the scene shifts 1,570 miles north to Stockholm. The National Museum is having an Appraisal Day. A local artist named Harald Lyth presents a little unframed oil sketch of *Daedalus and the Minotaur* **(FIG. 4A and B)**, which the museum's curator Görel Cavalli-Björkman admires but assumes is a copy. Lyth leaves the painting with her. A week later he phones to report that the owner wants the work back so he can sell it. At this point, she opens the great Rubens Bible, Julius Held's *Rubens Oil Sketches,* and sees what looks like the identical oil sketch, but it belongs to the museum in La Coruña, Spain. She then calls the Prado and verifies that it has been stolen.

> "More typical Rubens paintings, like the Medici Cycle at the Louvre, are larger and more difficult to steal. They are also not entirely by Rubens, who had a big workshop. But the two little gems from the Coruña museum are 100% Rubens."

This presents a quandary. Under Swedish law the museum does not have the right to hold onto the stolen painting. The curator returns it to Lyth but contacts the police. Their investigation leads them to the new owner, Ramón Ramudo, a part-time chauffeur, part-time office cleaner from La Coruña who lives in Stockholm. Ramudo concocts an amazing story that he bought the sketch, which he says is a copy, for $30,000 from two South American office cleaners who had studied in Leningrad and wanted the money to support the guerrilla Communist movements in South America. Furthermore, the painting is now at Sotheby's in New York. Alerted by the Swedish police, Sotheby's ships the picture back to Sweden.

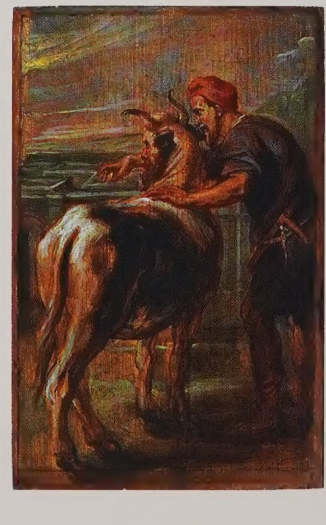
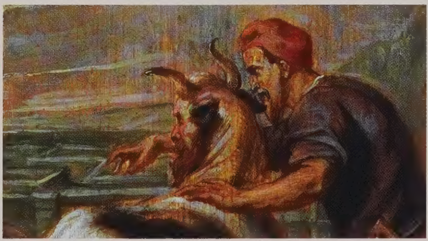


FIGURE 4A AND B. PETER PAUL RUBENS, *Daedalus and the Minotaur* (A: left) and detail (B: below).



Ramudo's passport shows that he had been in Spain a week after the theft. A trial ensues; he is found guilty and sentenced to two years in prison. But, four weeks later he appeals successfully when his lawyer argues that the sketch cannot be the stolen picture because its dimensions are 5 millimeters smaller than the published dimensions of the Spanish museum's work.

Ramudo is now the legal owner of the picture. But the curator and prosecutors have no doubt that it's the stolen picture. They appeal to the Supreme Court of Sweden. When their case is heard, in January 1987, the curator has a brilliant idea. She juxtaposes a transparency of the stolen painting in custody in Sweden with a negative of the illustration of the picture in the Coruña museum's photograph and then, in a masterly display, slides the one over the other. Perfect fit! The Supreme Court overturns the decision, the guilty verdict stands, and Ramudo is sentenced to two years in prison.

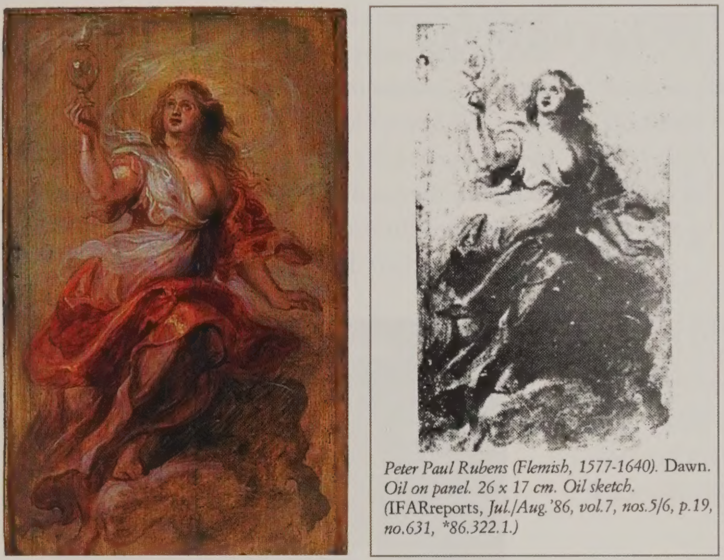
But Swedish law allows first-time felons convicted of nonviolent crimes six months to put their affairs in order before incarceration. Needless to say, Ramón Ramudo does not need six months to hightail it out of Sweden, presumably with the *Aurora* in his suitcase. So only one picture is returned to Spain.

* *

Fast forward four-plus years to April 25, 1991. U.S. Customs Special Agent Dave D'Amato gets a call from Stan, a confidential informer, who says that an Israeli-Mexican woman named Orly Beigel, who has dual passports, is offering a smuggled Rubens oil sketch called *Aurora* for sale.

Picture, if you will, not Stan and Orly Beigel, but Frank Sinatra and Jill St. John

> "Swedish law allows first-time felons convicted of nonviolent crimes six months to put their affairs in order before incarceration. Needless to say, Ramón Ramudo does not need six months to hightail it out of Sweden, presumably with the *Aurora* in his suitcase. So only one picture is returned to Spain."



Peter Paul Rubens (Flemish, 1577-1640). Dawn. *Oil on panel. 26 x 17 cm. Oil sketch.* (IFARreports, *Jul./Aug.'86, vol.7, nos.5/6, p.19, no.631, *86.322.1.)*

FIGURES 5A AND B. The photo of the stolen *Aurora* (A: left) compared with the photo of *Dawn* from a page of IFAR's *Stolen Art Alert* (B: right).

at the Miami Beach Fontainebleau [in the 1967 detective film *Tony Rome*]. You get the idea. Well, Dave D'Amato goes into high gear. In his first art case ever, he phones IFAR. Anna Kisluk, an IFAR staff member at the time, combs the back issues of IFAR's *Stolen Art Alert,* and while she does not find a picture named *Aurora*, she does find one named *Dawn* **(FIGS. 5A and B),** *Aurora* in English. Thinking he's onto something, Dave D'Amato assembles a team. First, an older agent named Hank Blair, calling himself Hank Thomas for this purpose and posing as a representative for the would-be buyer, meets with Orly and two Nicaraguans, the Alvarez father and son team who smuggled the work into the U.S. and are representing the owner in Nicaragua. Orly wants to meet at the Ocean Grande Hotel in Miami's South Beach. At the meeting, Agent Blair sees the picture and makes mental notes. He reports to Customs that the work is painted on a thin piece of wood and depicts a fat lady sitting on a cloud holding a lamp. Close enough.

Another agent, Zach Mann, visits the library at the University of Miami, finds *Aurora* in Julius Held's book on *The Oil Sketches of Peter Paul Rubens,* verifies that the image is the same as what Agent Blair has seen, and contacts Held about flying down to Miami to authenticate the sketch being offered for sale. It could, after all, be a copy or a forgery. It is not certain that it is the stolen picture from Spain. All we know is that it looks like the same picture from the book. The 86-year-old Held, retired in Vermont, refers Customs to his "young protégé Charles Scribner" in New York.

So I fly to Miami, and Agent Mann takes me to Customs headquarters where a clerk starts peeling off ten fifty-dollar bills. Aware that Customs is under the Treasury Department, I tell the clerk, "Surely, you want to give me a check." She replies, "No. Most of the people we do business with prefer cash." I say, "Well, I promise you I'm going to report it to the IRS!" Next, we enter a meeting room with a couple of dozen agents sitting around a table with a blackboard, firearms and bulletproof vests, ready for a coaching session. One agent says, "We've got to get this right because, remember, at that other hotel, when the shooting broke out and our guy was wounded. …" Now I'm paying attention. After they distribute all the bulletproof vests, I say, "Don't I get one?" The reply: "No. It would be too bulky and would give you away. But don't worry. We'll get you out in time!"

Afterwards, Stan drives Agent Blair and me to the Ocean Grande Hotel. As we are about to get out of the car, Blair says, "You know, Charlie, since you're gonna die anyway, you don't mind if we use you as a shield?" (That was to be *Newsweek's* quote of the week a few issues later.) Without thinking, I reply, "I'm not sure I want to turn 40 anyway." So we go in. I am given strict instructions: "Don't talk, just look at the picture, nod, shake your head, whatever. We'll get you out of there, and then we're going to blaze in with our guns, but we'll get you out of there first. Don't say anything. Don't talk to these people." There is a fourth man, Michael Dimitioff, clearly their gunman/bodyguard. Hank Blair is wearing a concealed wire and has a hidden camera in his briefcase. We are surrounded by a dozen armed U.S. Customs special agents.

> "... Agent Blair ... contacts [Julius] Held about flying down to Miami to authenticate the sketch being offered for sale. ... The 86-year-old Held, retired in Vermont, refers Customs to his "young protégé Charles Scribner" in New York."

These people are a captive audience, and I want to host a seminar on Rubens, whom I haven't taught for 15 years, since Princeton. I am in heaven. The drama gets the better of me. The bad guys present a small manila envelope. Out comes *Aurora*, wrapped in a greasy rag. I turn to Orly Beigel and say, "Miss Beigel, this is no way to wrap a Rubens. Next time you take better care, you put it in bubble paper, and keep it framed." I then start lecturing about how the work was painted, the iconography, the style. I sense Agent Blair getting a little hot under the collar. (I later find out that the agents listening in on their earphones were none too pleased about this captive seminar.) But Special Agent Zach Mann calls what happened next "the picture-perfect take down."

Fast forward a year. Beigel and the Nicaraguans are arrested, and Beigel has turned state's evidence. The trial takes place in federal court. When I fly down, the Customs agents tell me we have a problem, and the U.S. Attorney explains that the defense now claims that the picture is a fake or a copy, not the stolen Rubens. I will have to convince the jury that it is the stolen work. Having just come from jury duty myself, I know what juries want to hear, so I give them the full monty. When I declare that I have no doubt about where this Rubens came from, the judge asks me for the basis of my certainty. First I look at him and then at the jury, which doesn't know Rubens from the sandwich, and say, "It's exactly the same experience we all have when a stack of mail arrives, and we flip through it, and we see in the middle of the stack we have a letter from mom. We haven't looked at the return address; haven't opened the letter. How do we know? We recognize the handwriting. It's as simple as that." I recognized Rubens handwriting. By the defense's summation, their denial of authenticity is dropped.

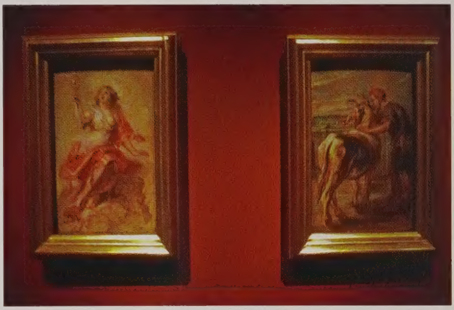


FIGURE 6. The recovered paintings hanging in the museum.

The defendants are convicted and sent to prison. The government, however, proves unable to extradite Ramón Ramudo, the seller from Nicaragua, who remains an INTERPOL fugitive. But justice has been done. The picture is returned to La Coruña **(FIG. 6)**, and thanks to Ramudo and all the attention and press and excitement, La Coruña gets a new art museum in 1995 **(FIG. 7)** with state of the art security.

MUSEO
BELAS ARTES

FIGURE 7. The new Museo de Belas Artes.

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UNDERCOVER OPERATIONS: HOMELAND SECURITY INVESTIGATIONS

BRENTON EASTER*

The U.S. Department of Homeland Security/ Homeland Security Investigations (ICE / HSI), where I am a Special Agent **(FIG. 1)**, is responsible for investigating a wide range of domestic and international activities arriving from the illegal movement of people and goods into, within and out of the United States. Homeland Security investigates immigration crimes, human rights violations, human smuggling, smuggling of narcotics, weapons and other types of contraband, financial crimes, cyber crimes, and export enforcement issues. Special Agents conduct investigations aimed at protecting critical infrastructures and industries that are vulnerable to sabotage attacks and exploitation.

HOMELAND SECURITY INVESTIGATIONS
U
S
DEPARTMENT OF HOMELAND SECURITY
SPECIAL AGENT

FIGURE 1.

ICE/HSI is also responsible for international cultural property crime investigations. This is a legacy of when we were U.S. Customs, back when Mr. Scribner was helping us. Today, as ICE/HSI, we continue with the responsibility for cultural property crimes, primarily due to our Customs authority. We have an international footprint, with 75 offices abroad in 48 countries **(FIG. 2)**. There are more than 200 offices in the U.S., wherever there is an international port and all along our international boundaries.

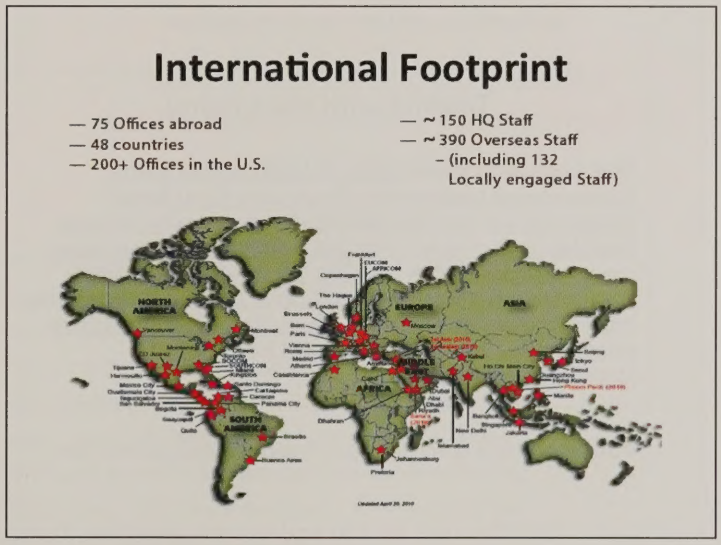
International Footprint
— 75 Offices abroad
— 48 countries
— 200+ Offices in the U.S.
— ~150 HQ Staff
— ~390 Overseas Staff
- (including 132 Locally engaged Staff)
NORTH AMERICA
SOUTH AMERICA
EUROPE
AFRICA
ASIA

FIGURE 2. HSI's International Footprint.

You might have seen our counterparts in Customs or Border Patrol uniforms. We are expected to look at many things: on an annual basis, more than seven million containers enter the U.S. and 60 million people legally visit the U.S. There are, of course, some that we do not see.

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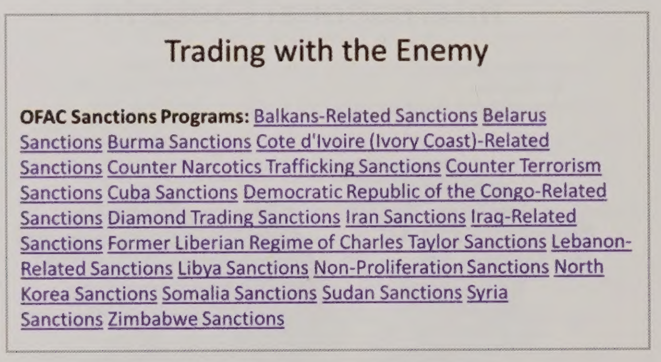
* Brenton Easter is Special Agent, Department of Homeland Security (ICE), New York. He is part of a financial task force called the El Dorado Task Force and can be reached at Brenton.Easter@dhs.gov.

How does smuggled artwork arrive in the U.S.? Any way that you can imagine. It can come in via land, sea, or air. It can be hand carried or come in through the mail, or pieces can be sold on the Internet. The global art and antiquities trade equals $87 billion per year. The stolen and looted art trade is said to be the third most lucrative illicit activity after weapons and narcotics. It can be linked to money laundering and to financing terrorist activities. Currently, there are 19 bilateral agreements that we can use to detain shipments at port and to see whether the cargo is illicit or legitimate. We also use Office of Foreign Assets Control (OFAC) sanctions programs **(FIG. 3)** to try to seize illicit cultural property or any other items or commodities that might be coming in. HSI is committed to investigating all actionable allegations of instances of looting and theft. Where the objects have entered or are entering the U.S. or pass through the U.S. to another destination country, actionable allegations require us to have statutory authority to initiate an investigation.



Trading with the Enemy

OFAC Sanctions Programs: Balkans-Related Sanctions Belarus Sanctions Burma Sanctions Cote d'Ivoire (Ivory Coast)-Related Sanctions Counter Narcotics Trafficking Sanctions Counter Terrorism Sanctions Cuba Sanctions Democratic Republic of the Congo-Related Sanctions Diamond Trading Sanctions Iran Sanctions Iraq-Related Sanctions Former Liberian Regime of Charles Taylor Sanctions Lebanon-Related Sanctions Libya Sanctions Non-Proliferation Sanctions North Korea Sanctions Somalia Sanctions Sudan Sanctions Syria Sanctions Zimbabwe Sanctions

FIGURE 3. Office of Foreign Assets Control Sanctions Programs.

U.S. Customs art and undercover operations have been around for a long time. One sting operation in 1982 resulted in the arrest of Father Lorenzo Zorza, better known as "Father Sin," and Achilles Renzullo. While a nondiplomatic staffer at the Vatican mission to the U.N., Father Zorza was caught smuggling in from Rome two stolen Italian Renaissance paintings to sell in the U.S. on behalf of Achilles Renzullo. Working undercover with an individual who was not a Customs agent, Customs bought a stolen painting, and they were eventually able to convict Renzullo, who went to jail for six months. For his role as courier, Zorza was sentenced to three years probation. In a later narcotics investigation in 1988, Father Sin was found to be laundering money for narcotics organizations.

> "How does smuggled artwork arrive in the U.S.? Any way that you can imagine."

Now, a little bit about myself. I always wanted to be Indiana Jones. As an anthropology and archaeology major in college, I read Clive Cussler's book *Inca Gold,* in which a Customs special agent investigated Peruvian antiquities that were used to launder money from narcotics trafficking. I thought that sounded cool. Around that time, I saw a newspaper clipping about the U.S. Customs group out of New York that investigated cultural property art crimes, and I decided to sign up. What I could not have foreseen was 9/11, after which the cultural property and art crimes group in New York dissolved because Homeland Security had more important things for us to look at.

Where do I fit in with undercover operations? I am the case agent who investigates and runs the operations; who sits behind the desk, looks at the different leads, and tries to determine whom we will or won't investigate, how we will investigate, and whether or not an undercover operation actually needs to take place; who should be the undercover operative, whether an agent or somebody else. Another decision is whether the investigation should go forward as a civil or criminal proceeding. Normally, you won't see me. If you do, it is at the beginning or end of the investigation, in a room with a table and a couple of chairs and a one-way reflective glass window behind us. Should you ever find yourself in that situation, always tell the truth.

Traditionally, Customs handled most cultural property investigations civilly versus criminally. Civil cases have a lower burden of proof, preponderance of evidence rather than beyond a reasonable doubt. Some civil cases, however, for example, *U.S. v. An Antique Platter of Gold*[1] **(FIG. 4)** which was appealed all the way to the Supreme Court (which declined to review it), are difficult. Generally, it is much more difficult for us to win criminal cases. There is usually a scienter — knowledge — requirement, and we use undercover operations as a tool to prove knowledge. Considering the monumental hurdles criminal cases present, many cases will not be accepted for criminal prosecution. The value of the items might not be sufficiently significant, and the evidence might not be viable for a federal case. I also need to decide whether we would invoke Customs laws, or stolen property laws. Customs laws — 18 U.S.C. 545 and 18 U.S.C. 542 — are easier: while it is not difficult to find a mistake on an importation, it is much more difficult to prove that somebody was knowingly trying to sell stolen items with a false provenance.

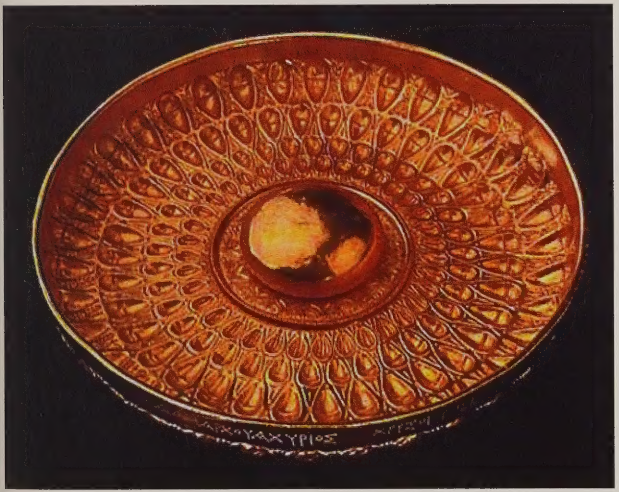


FIGURE 4. ***Gold Phiale Mesomphalos*, c. 400 BC. Seized in New York in 1995 and returned to the Italian government in 2000.**

In 2010, for example, with Customs laws we were able to seize and later repatriate to Indonesia five hand-carved 18th and 19th century Dayak Trophy Skulls **(FIG. 5)** that were brought into the U.S. with a false declaration. Customs and Border Patrol officers encountered them at a mail facility in Newark, NJ. They had been shipped from Indonesia with a declared value of less than $5, although they were later appraised at a few thousand dollars each.

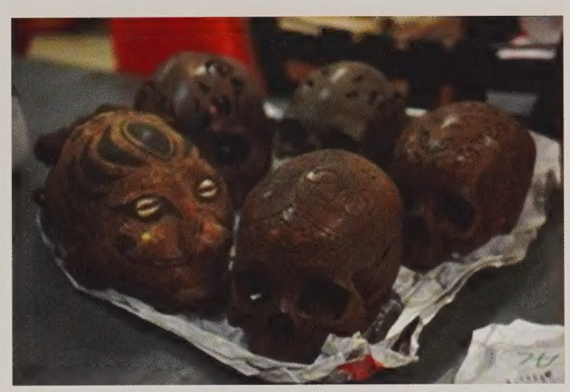


FIGURE 5. ***Dayak Trophy Skulls* (Indonesian, 18th-19th century). Returned to Indonesia.**

"In my experience, disgruntled employees and spouses are generally good sources."

With criminal cases, we often use the National Stolen Property Act — 18 USC 2314 & 15 — a major enforcement mechanism that requires movements across state or international borders and proof of knowledge of the theft. There are stolen property laws at the federal level and in many states. If I want to make a criminal case in New York or New Jersey that does not fit all of the criteria and meet the value threshold for federal prosecutors, I have the option of trying to work at the state level. Because prior knowledge is the difficult part, we will use numerous covert mechanisms to prove it. Sometimes we begin by finding the right person to talk to. In my experience, disgruntled employees and spouses are generally good sources. With undercover operations, simple is best. As Albert Einstein said, "If you can't explain it simply, you don't understand it well enough."

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[1] *United States v. An Antique Platter of Gold,* 991 F. Supp. 222 (S.D.N.Y. 1997), *aff'd,* 184 F.3d 131 (2d Cir. 1999), *cert. denied,* 528 U.S. 1136 (2000).

Let me turn to a recent undercover case from 2012 — Operation Small Denomination. I received information that a coin coming up for auction in January 2012 in conjunction with the New York International Numismatic Convention at the Waldorf Astoria was either illicit or stolen **(FIG. 6).** I had been told that coin cases are very difficult to pursue criminally. When I began my research, I realized that not only might the coin, a silver decadrachm from Akragas, Sicily ca. 409-406 BC (Lot #1008), be stolen, but it might also be one of the most valuable coins to ever come up for auction, with a starting bid of $2.5 million **(FIG. 7).** There were other coins for sale from the same collection, including another Akragas and a Greek silver tetradrachm, ca. 405-403 BC, with a starting bid of $300,000 **(FIG. 8).** So now, the investigation proceeded from one really valuable coin to two really valuable coins, to three really valuable coins — better and better. That is how an investigation should go.

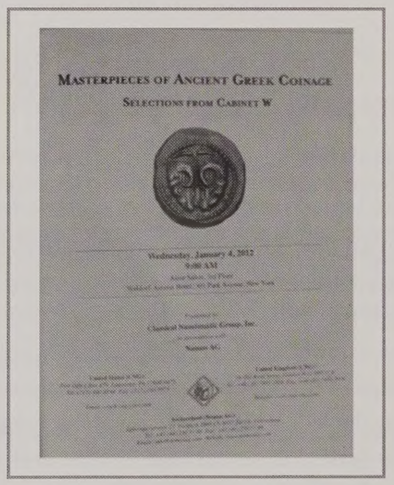
MASTERPIECES OF ANCIENT GREEK COINAGE
SELECTIONS FROM CABINET W

FIGURE 6. **Catalogue for the January 2012 auction of Ancient Greek coins.**

The seller, Dr. Arnold-Peter Weiss, was a prominent hand surgeon and philanthropist who was also a former board member of the American Numismatics Society. Posing as a prospective bidder, a U.S. government informant secretly recorded Weiss stating that the coins were "freshly dug" (recently excavated) from the ground and that he had no paperwork for them. Suspecting that the "buyer" was interested in the most valuable coins, Weiss steered him away from the less expensive ones, including Lot #1009, the Greek tetradrachm, which he intimated might be stolen. Weiss had, indeed, satisfied all the requirements for knowledge of a theft.

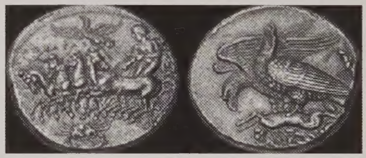

FIGURE 7. **Front and back of a silver *Decadrachm of Akragas* (Sicily, 409-406BC), which was offered for sale at a starting bid of $2.5 million.**

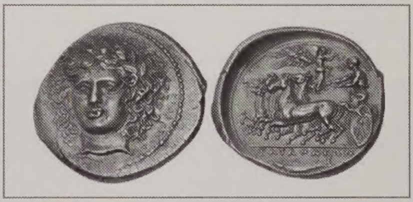

FIGURE 8. **Front and back of a silver *Tetradrachm* (Greece, 405-403 BC), which was offered for sale at a starting bid of $300,000.**

The day of the preview, we prepared for the bust. Dressed in our normal street clothes, we hid in a tiny laundry room at the Waldorf, waiting for Dr. Weiss to show both of the two major Akragas coins at one time. Meanwhile, he was walking around with potentially five-plus million dollars worth of coins in his pocket. After we emerged from the laundry room, seized the coins, and arrested Weiss, he and I sat in a room with a one-way mirror where he admitted to making a mistake. He confessed that greed had gotten the better of him, that he had known better. He also said that the crime was part of an industry-wide problem. I appreciated his candor, as did the prosecutors. Originally, Weiss was charged with one count of criminal possession of stolen property.[2] He seemed prepared to face the consequences, but he wanted to remain a practicing physician. He was a remarkable doctor who did a lot of philanthropic work, much of it in third world countries and for people who could not have otherwise afforded his services.

"Normally, you won't see me. If you do, it is at the beginning or end of the investigation, in a room with a table and a couple of chairs and a one-way reflective glass window behind us. Should you ever find yourself in that situation, always tell the truth."

The coins needed to be authenticated before we could proceed with our case. As it turned out, during an electron microscope scan, the three major coins that we had been looking at were identified as forgeries. Instead of recovering $5 million of stolen property for Italy, we ended up saving an unsuspecting buyer from spending $5 million on fake coins. The charges against Weiss were modified to attempted possession of stolen property. He was sentenced to 70 hours of community service, abandoned all interest in the coins seized, and agreed to write an article discussing the widespread trade in unprovenanced ancient coins.[3] I conclude with a quote from his article:

> "... dealers and collectors with any reasonable experience can tell that such a simultaneous offering just does not happen naturally, except after a recent hoard of coins that has been found and dispersed into the marketplace. The purchase of coins that derive from hoards is likely to be illegal and detrimental to scholarship and these might be reasons enough for the buyer to be aware."

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CONT. →

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[2] *People of the State of New York v. Arnold-Peter Weiss,* No. 12-1521 (N.Y. July 3, 2012).

[3] Arnold-Peter Weiss, "Caveat Emptor: A Guide to Responsible Coin Collecting," *ANS Magazine,* Issue 3, Fall 2012.

THE ART LOSS REGISTER

CHRISTOPHER A. MARINELLO*

The primary role of the Art Loss Register (ALR) is to register stolen works of art on a central database and provide due diligence searching against that database. Once a stolen item is located, it is my responsibility as General Counsel to develop a strategy to recover the stolen item, often with the cooperation of law enforcement. I have also developed an extensive mediation practice to resolve art related title disputes.

There are a few persistent myths about art theft that I would like to dispel. People who have seen the James Bond film "Dr. No" often ask me if there is a Dr. No type character out there collecting stolen works of art and hiding them in a secret facility or even an underwater lair. The other myth is that art thefts are made to order for specific criminal clients. At the risk of taking the "romance" out of art theft, these are mostly Hollywood fantasies with little basis in reality.

While I occasionally come across the oligarch who knowingly buys stolen art to decorate a villa in the south of France, most art theft is committed by common thugs without the aid of "Thomas Crown Affair" style laser beams. I have been involved in a number of sting operations with law enforcement officers all over the world, most of which remain confidential. The people in **FIGURE 1** are more representative of the characters we typically encounter as opposed to the ones you see in the movies.

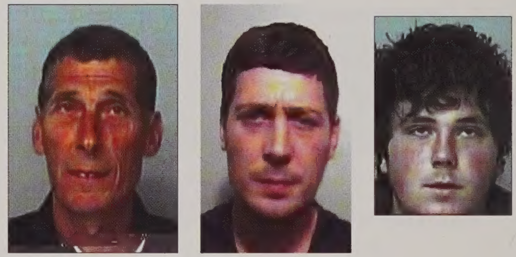

FIGURE 1. Typical art thieves: the Johnson Gang, a family of criminals stealing from country houses in the U.K.

They are members of the notorious Johnson Gang, a family of convicted criminals caught stealing from country houses in the UK. From this image, it appears that this entire family shares one set of teeth. Another art thief I recently encountered is the individual who stole from private homes in the UK and then fenced the artwork through a pub that was owned by a former Metropolitan Police Officer.

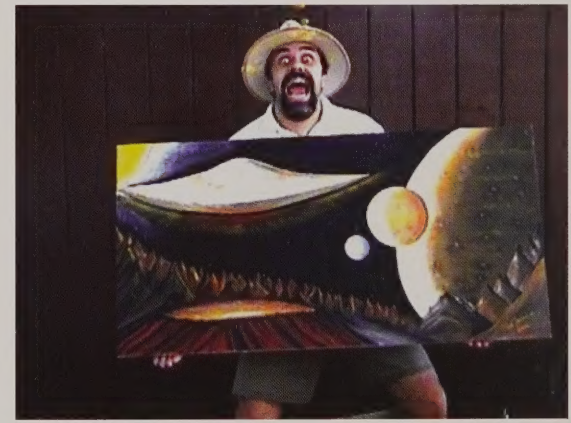

FIGURE 2. This painter of "alien art" was selling German engravings stolen from an East German museum.

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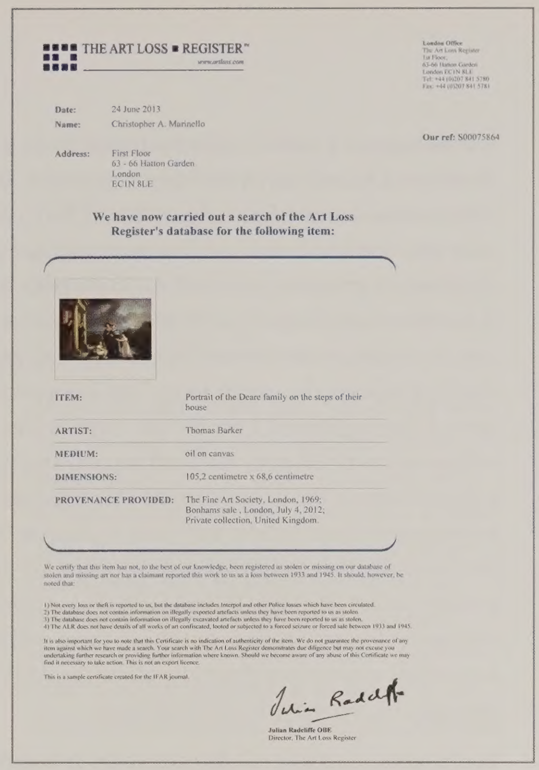
[*] Christopher A. Marinello is Executive Director and General Counsel, The Art Loss Register (ALR), based in London.

Yet another character involved in selling stolen works of art would be this spirited painter of "alien art" **(FIG. 2)**, who was selling German engravings stolen from an East German museum. Posing as an interested buyer, I met him at a bookstore in Southwest, Florida and followed him to a house where I viewed the stolen engravings, which hung all around the walls in the living room. My initial apprehensions at being involved in this sting operation dissipated upon entering the home and seeing a number of small children playing video games in the next room. As a precaution before entering the home, I had phoned the local police who told me to dial them and keep the phone open while in the house. Only later did I learn that there was Muzak on the line and that the police weren't really paying any attention to me.

> "Is [there] a Dr. No type character collecting stolen works of art and hiding them in a secret facility or even an underwater lair?"

Most of the places that we visit on sting operations are poor, badly kept houses or trailers belonging to those arrested by local police. Law enforcement will ask us to visit these locations with the ALR database on a laptop in order to check items against the database to determine if they are stolen.

The Art Loss Register staff registers stolen items on its database of stolen art and then searches auction house catalogues and other sales venues against the database to see if there are any "matches," that is, to see whether we find something that has been reported stolen. IFAR created the original database in the 1970s. The Art Loss Register was established in London in 1991 to maintain and expand that database**; its founding members were industry professionals in the insurance and art fields. The ALR database started with about 30,000 IFAR records and now has close to 380,000 items. Approximately 10,000 items are added each year ranging from paintings and collectibles to automobiles and jewelry. We search more than 300,000 items each year, and have recovered over 300 million dollars of stolen and looted artwork since our inception.



THE ART LOSS ■ REGISTER™
www.artloss.com

London Office
The Art Loss Register
1st Floor,
63-66 Hatton Garden
London EC1N 8LE
Tel: +44 (0)207 841 5780
Fax: +44 (0)207 841 5781

Date: 24 June 2013
Name: Christopher A. Marinello

Our ref: S00075864

Address:
First Floor
63 - 66 Hatton Garden
London
EC1N 8LE

We have now carried out a search of the Art Loss Register's database for the following item:

ITEM: Portrait of the Deare family on the steps of their house
ARTIST: Thomas Barker
MEDIUM: oil on canvas
DIMENSIONS: 105,2 centimetre x 68,6 centimetre
PROVENANCE PROVIDED: The Fine Art Society, London, 1969; Bonhams sale , London, July 4, 2012; Private collection, United Kingdom.

We certify that this item has not, to the best of our knowledge, been registered as stolen or missing on our database of stolen and missing art nor has a claimant reported this work to us as a loss between 1933 and 1945. It should, however, be noted that:

1) Not every loss or theft is reported to us, but the database includes Interpol and other Police losses which have been circulated.
2) The database does not contain information on illegally exported artefacts unless they have been reported to us as stolen.
3) The database does not contain information on illegally excavated artefacts unless they have been reported to us as stolen.
4) The ALR does not have details of all works of art confiscated, looted or subjected to a forced seizure or forced sale between 1933 and 1945.

It is also important for you to note that this Certificate is no indication of authenticity of the item. We do not guarantee the provenance of any item against which we have made a search. Your search with The Art Loss Register demonstrates due diligence but may not excuse you undertaking further research or providing further information where known. Should we become aware of any abuse of this Certificate we may find it necessary to take action. This is not an export licence.

This is a sample certificate created for the IFAR journal.

Julian Radcliffe

Julian Radcliffe OBE
Director, The Art Loss Register

FIGURE 3. A sample ALR search report where no "match" was found.

> "If, on the other hand, a match is made and a work may be stolen, no certificate is provided. Instead, the ALR reports the match to the law enforcement agency that registered it on the database or was otherwise involved with the theft report …"

Theft registrations come from various sources: appraisers, private collectors, museums, insurance companies, and law enforcement. We continue to be notified of recent thefts by IFAR, the Art Dealers Association of America (ADAA) and attorneys registering items on behalf of their clients.

Who searches the ALR database? Law enforcement, auction houses, dealers, museums – before they bor-

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** Editor's Note. IFAR licenses its records to the ALR and managed the U.S. operations of the ALR, a commercial enterprise, from 1991–1998.

row or acquire a work – collectors, appraisers and attorneys. Once a search has been completed, the client receives a certificate signed by ALR's chairman that states that the searcher has exercised due diligence in searching the ALR database **(FIG. 3).** If, on the other hand, a match is made and a work may be stolen, no certificate is provided. Instead, the ALR reports the match to the law enforcement agency that registered it on the database or was otherwise involved with the theft report, and we inform them of the item's current whereabouts. Law enforcement then decides how best to recover the item and whether to initiate a sting operation and perhaps enlist our help. If the original case is old and law enforcement does not think there will be a criminal arrest, they generally allow the ALR to manage the recovery in a civil fashion.

We have an excellent relationship with law enforcement all over the world. We offer our services to them for free, as we are often on the front lines in locating and confirming the whereabouts of stolen or looted works.

When working with the police, it is particularly crucial to maintain confidentiality and allow investigative officers to complete their criminal investigations before getting involved in recovering stolen art. There are those who practice "art recovery" without adhering to these principles which, in my view, is unethical, potentially illegal, and destined for failure. I have provided witness testimony in support of criminal prosecutions and have served as a liaison between foreign and U.S. law enforcement who may need to act quickly rather than wait for formal INTERPOL paperwork to be processed.

The ALR's art historians are also made available to serve law enforcement. Our records sometimes go back 50 years; police agencies do not always keep their old records or otherwise have a difficult time accessing them. Often, the police will phone us and say, "We can't find our own police report. Do you have it?" While law enforcement is apprehending the criminal, we are helping to recover the stolen item – our primary goal. Some of our staff have even served as "special constables" in the UK. New Scotland Yard has a program called "Art Beat," where trained staff members patrol such antique markets as Portobello Road and actually have the power to make an arrest if someone is found to be selling stolen artwork

I would now like to discuss some of the non confidential sting-related cases in which the ALR has been involved. First, I would like to mention the well-known interior designer who reported the theft of an item worth $100,000 and received a generous payout from his insurance company. The insurer registered the theft on the ALR database, and years later, the item was located when someone searched the work in the process of curating their collection. When we alerted the searcher, he said that he had purchased the item from a gallery that bought it from another gallery that bought it from yet another gallery that actually bought it from the theft victim. We quickly realized that we had an insurance fraud case on our hands. I contacted the "victim" and invited him to my office, where he thought he could buy back the piece from his insurance company at a discount. Much to his dismay, when he arrived at my office, he was met by law enforcement officials and interrogated for several hours before pleading guilty. This is typical of an operation where we work in cooperation with the police.

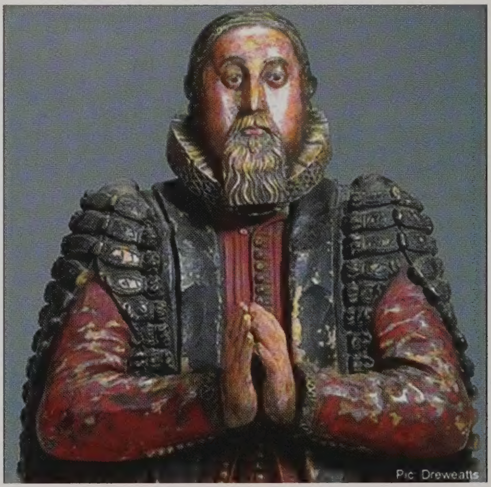

Pic Dreweatts

FIGURE 4. **A 17th-century alabaster bust of Dr. Peter Turner, looted from St. Olave's church in London in 1941 and recovered with the help of the ALR in 2010.**

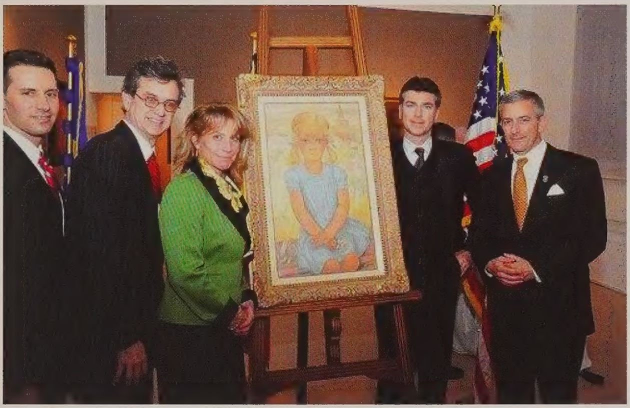


FIGURE 5. At the 2009 restitution ceremony for the recovered Anto Carte portrait, from left to right: Brian Davis, U.S. Immigration and Customs Enforcement (ICE); U.S. Ambassador Howard W. Gutman; Bonnie Goldblatt (ICE); Christopher A. Marinello, ALR; Matthew King, Deputy Assistant Director, ICE.

Another case, which we handled pro bono, concerned a work of art that was looted during WWII. After St. Olave's church in London was bombed by the Nazis in 1941, a bust of Dr. Peter Turner in the church went missing **(FIG. 4)**. The bust surfaced in 2010 at a regional auction house in the UK, which pulled the item from sale after we notified them of the problem. The consignor claimed that he bought the bust in good faith from a dealer in The Netherlands. While investigating this dealer, I uncovered a shocking surprise. Elaborate treasures from European churches were piled from floor to ceiling in every room of his premises. I had visited this dealer to break the bad news that his argument of having purchased the item in good faith had been destroyed when we discovered that a criminal had handled the bust and that this criminal was now serving time in prison for smuggling cocaine inside of sculptures and various works of art.

In yet another recent case, we worked with U.S. Immigration and Customs Enforcement (ICE) in New York on the return of a Nazi-looted painting, *Jeune fille à la robe bleu,* by the Belgian artist Antoine (Anto) Carte **(FIG. 5)**. The painting was one of five taken in 1944 from a home in Brussels. The theft was registered in a publication of wartime art losses in Belgium and later entered into our database. In 2008 the ALR found it being offered for sale by a Long Island dealer, André Sakhai. After we alerted ICE, they sent two agents pretending to be a colleague and me posing as interested buyers, to the storage facility to view the piece. At the scene, Customs officials seized the painting, which was eventually returned to the rightful owner in Belgium in a very moving ceremony. It was a priceless moment, as the little girl in the portrait, which was painted in 1932 from a family photograph **(FIG. 6)**, is now a woman in her late 80s.

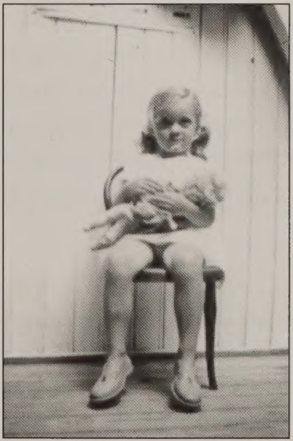


FIGURE 6. Photograph showing the subject of Antoine (Anto) Carte's portrait *Jeune Fille à la Robe Bleu,* a 1932 oil on canvas painting stolen from the family home in Brussels by the Nazis in 1944 and recovered in 2008.

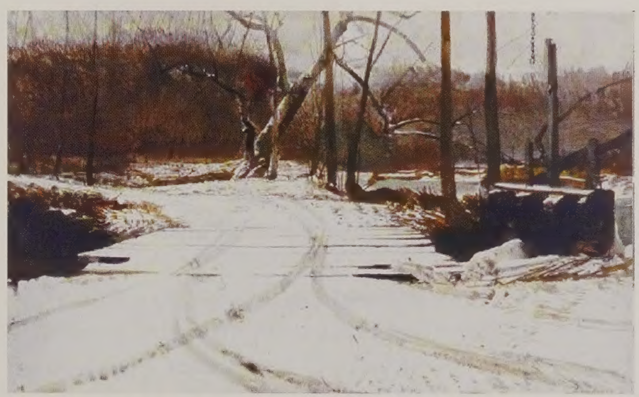


FIGURE 7. ANDREW WYETH, *Race Bridge,* 1984 watercolor © Andrew Wyeth. Stolen in Houston, Texas in 2000 and recovered with the help of the ALR in 2008.

In yet another interesting case, a woman registered an Andrew Wyeth watercolor, *Race Bridge* **(FIG. 7)**, that was stolen from her home in Houston, Texas in 2000. We located the work in Texas in 2008 when someone tried to sell it through a Houston based auction house. I arranged for the seller to come to the gallery but not before contacting the local police. When the seller arrived, he was greeted by eight police officers, who seized the painting. The seller was arrested, but not for the theft of the painting due to insufficient evidence. The man agreed to surrender the work through an attorney for $500 and a case of beer. The insurance company approved the settlement and the work was eventually sold for over $60,000.

One case where a sting operation went awry had a happy resolution. In March 2011, a valuable 1925 photograph by the artist Frantisek Drtikol, *The Wave* **(FIG. 8)**, was stolen from the Museum of Decorative Arts in Prague. The theft was reported to us the next day. When someone tried to sell the piece, I posed as an interested buyer. I asked the seller send the work to a gallery which then sent it to me in London. I then contacted the Czech police and told them to come pick it up. Before any of this, I contacted INTERPOL, New Scotland Yard, the Los Angeles Police Department (LAPD), and the New York City Police Department (NYPD), desperate to get someone to make an attempt to arrest the criminal. To give you an idea of the bureaucracy we encounter, the Metropolitan Police in London would not allow the Czech Police to accept the recovered artwork in London while in uniform. Instead, I had to meet the Czech police and the Prague museum director, who identified the work, at a local pub where we returned the half-million-dollar photograph over a pint. Two months later, INTERPOL finally caught up with me to ask how they could help. The operation to arrest the criminal failed at the time, but we were able to recover the photo – within 15 days of the theft! [Update: Prague police finally arrested the criminal responsible for the museum theft in June, 2013.]

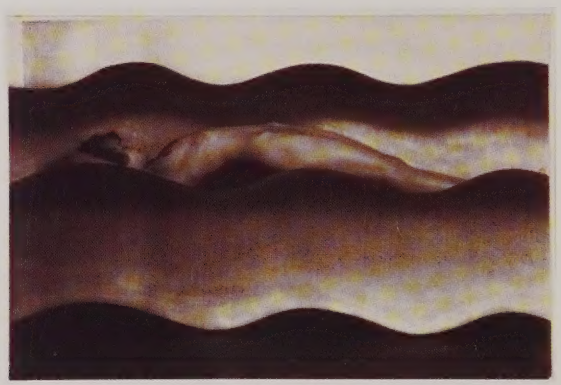


FIGURE 8. FRANTIŠEK DRTIKOL (Czechoslovakian, 1883-1961), *The Wave*, a 1925 photograph stolen from the Museum of Decorative Arts in Prague in March 2011 and recovered two weeks later with the help of the ALR.

In conclusion, the ALR serves as an important private partner to law enforcement's efforts in recovering stolen artwork. Over the years we have been enormously successful in locating and recovering stolen and looted artwork, but sometimes, there is no substitute for the folks with the guns and the badges.

• • •

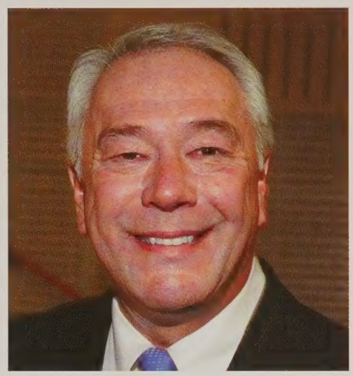
THE UNDERCOVER OPERATIVE

ROBERT K. WITTMAN*

Brent Easter is absolutely right: always tell the truth. Just make sure that you tell it to your lawyer first.

I am no longer in law enforcement. I retired from the FBI. I am now in the business of helping people who have problems involving art and cultural property crime. But not just crime. Situations concerning art litigation and related issues are not always criminal. For a case to be criminal, it must have the elements of a crime that are provable beyond a reasonable doubt. Typically, art collectors, dealers, museum staff and other art professionals encounter civil disputes, provenance issues, due diligence questions, etc. Only about ten percent of situations they might encounter are criminal. Since my retirement in 2008, I have been involved in five different undercover operations. Two of those were criminal cases, the rest were civil. Sometimes we try to find paintings not for the purpose of recovering stolen property but rather for the purpose of identifying them, to prove they exist.

In my career as an FBI agent, I often worked undercover, which is just one investigative technique. Wiretaps, surveillance, interviews are other investigative techniques. With art cases, it is often difficult to prove criminal activity without undercover work; usually, in undercover cases you are trying to accomplish two things: 1) prove knowledge of the crime itself, that the person knows that what he is doing is illegal; 2) obtain and recover property.



In the three cases I will discuss below, I was the undercover agent, not the case agent. When I was growing up in Baltimore, my parents were Asian art and antique dealers. Because I developed an expertise in the field and could play the role and speak the language of an art dealer, case agents working on art cases would contact me.

The first case is Operation Cuba, a puzzling name, since it took place in Madrid, Spain. The case agent, Konrad Motyka in New York, received a tip from an informant about a huge heist that occurred in Madrid in 2001. Three thieves stole seventeen paintings valued at $50 million from the apartment of Esther Koplowitz, who was married to the biggest steel magnate in Spain.

> "Since my retirement [from the FBI] in 2008, I have been involved in five different undercover operations. Two of those were criminal cases, the rest were civil."

In 2002 we traveled to Madrid, and working undercover with the Spanish National Police, we began negotiating with the thieves, whom the police regarded as among the top ten criminal groups in the country. After six to eight meetings, we agreed to pay them 10 million euros for the ten paintings of the original seventeen that they said they still had. Posing as the authenticator, the Charles Scribner role, I had to select which of the ten paintings I was going to buy first. The seller wanted 4 million

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[*] Robert K. Wittman is Former Senior Investigator and Founder, FBI's National Art Crime Team. He is also the author, with John Shiffman, of *Priceless — How I Went Undercover to Rescue the World's Stolen Treasures* (New York: Crown Publishers, 2010). He is currently principal of Robert Wittman Inc., a private security and recovery firm. Mr. Wittman's IFAR talk included a video presentation.

> "When the SWAT team arrives, the best place to be is under the bed. That's where I was hiding, all the while practicing how to say that I was a "good guy" — "bueno hombre" — in Spanish."

euros. for the first one as a payment. I pulled out a list of the paintings downloaded from the FBI Art Crime website, which I had carefully cut off at the tops and bottoms of the pages to conceal their source. I asked, "Which ones do you still have? You had seventeen. You've sold seven. Do you know which ones they are?" As the seller and I scanned the list, he said, "Oh, that's the FBI website." You could have heard a pin drop in that room at that moment. So I looked at him and said, "That was the best place to get the pictures." And he said, "Very good space, good spot." This proves that criminals look on the Internet. They want to see what they've done. They want to see where things are turning up. They are paying attention. I selected a Breughel he had, a *Temptation of Saint Anthony,* and said that I would give him the 4 million asking price. When we met at the hotel the next day, he brought the painting and I flashed one million euros. He said that he had been looking for someone like me, an expert who could authenticate paintings, for years. The group had plotted to kidnap an art history professor from a university in London and hold his children hostage. The thieves would steal more paintings, which they would force the professor to authenticate and help to sell. Hopefully, we foiled their plans.

After the thieves brought the Breughel painting to the hotel room, we found out they had the other nine paintings in the trunk of their car, which was parked at the hotel **(FIG. 1).** They were going to do this first deal for the 4 million and then another deal for 6 million for the rest of the paintings. We called in the SWAT team, who entered the room and made the arrest. When the SWAT team arrives, the best place to be is under the bed. That's where I was hiding, all the while practicing how to say that I was a "good guy" — "bueno hombre" — in Spanish. All ten paintings were recovered that day, including a Goya, *The Swing* **(FIG. 2),** valued at about $15 million. This was the largest undercover operation in Spanish history. The *New York Times* published a story about it called "Spanish Police and F.B.I. Get Their Men and Stolen Art" **(FIG. 3).** Within three months, the police were able to recover the other seven works. Three men were arrested, including Ms. Koplowitz's security guard, who was in on the crime all along.

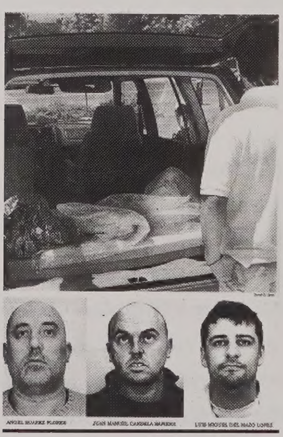


FIGURE 1. **Operation Cuba: photo (top) shows paintings recovered from the back of a vehicle and (below) the three thieves.**

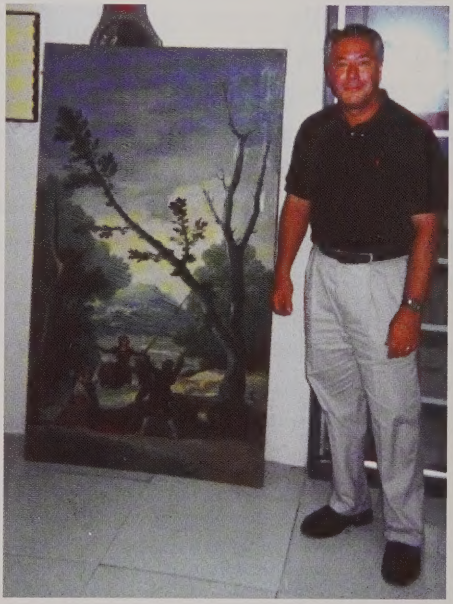
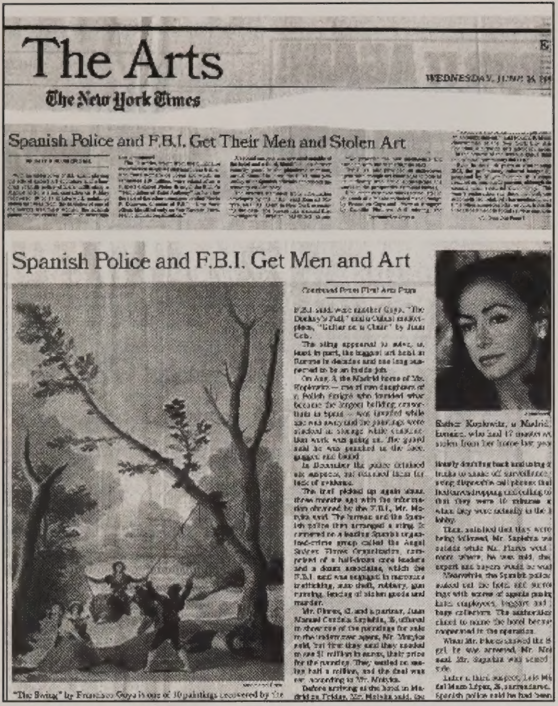


FIGURE 2. **Robert Wittman stands near Goya's *The Swing,* recovered during Operation Cuba.**



The Arts

The New York Times

Spanish Police and F.B.I. Get Their Men and Stolen Art

Spanish Police and F.B.I. Get Men and Art

FIGURE 3. *The New York Times* **June 26, 2002 article about the recovery of the stolen Koplowitz paintings.**

A 2006 case in Ecuador involved international smuggling. A case agent in Miami learned that someone was illegally trying to sell Ecuadorian artifacts, which are part of that country's cultural heritage. The seller contacted ICOM, the International Council of Museums, in France, asking whether they knew anyone who wanted to buy 500 Ecuadorian artifacts. ICOM, of course, then contacted INTERPOL in Lyon, which contacted Miami, and the Miami FBI initiated a case. Working undercover as a buyer, I began traveling back and forth to Miami, meeting with the dealer, who represented a family that had collected more than 700 such pieces in Guayaquil, Ecuador. The sellers were flying objects in to show me **(FIG. 4)**. To make a criminal case, we first had to prove that they were authentic. An archaeologist from Binghamton University in New York posed as my client, the collector. Once he determined the pieces were real, we knew we had a case. After we found out where the pieces were stored, we contacted the Ecuadorian police and coordinated a simultaneous raid in Guayaquil and Miami. We recovered 500 pieces in Miami and the police recovered 200 others in Ecuador — the largest recovery at one time of Ecuadorian artifacts, more than $2 million worth. These were beautiful pieces, and it was illegal to take them out of that country. It helped our case that the objects were wrapped in newspaper, providing a date when they left the country.

The last case I will mention, Operation Bullwinkle, originated in Los Angeles and involved a heist from the Swedish National Museum located on the waterfront in Stockholm **(FIG. 5)**. At 5 PM on December 23, 2000, three men armed with machine guns stole three paintings, two by Renoir and a third by Rembrandt. To ensure their getaway, they detonated two car bombs on the major roads leading to the museum and fled the area via a motorboat. The crime was beautifully thought out: machine guns, car bombs, a motorboat for getaway, and $42 million worth of paintings.

In 2002, one of the Renoir paintings was recovered. Nothing else happened until 2005 when FBI agents

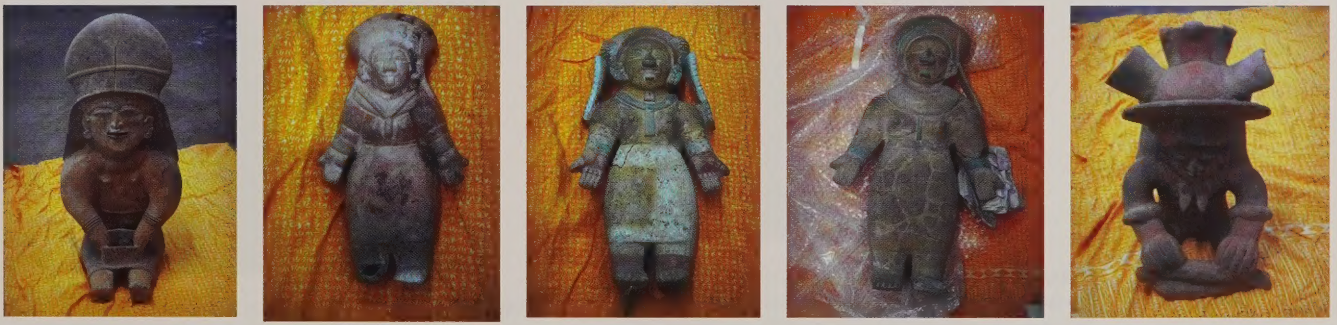


FIGURE 4. Some of the 700 Ecuadorian artifacts recovered in 2006.

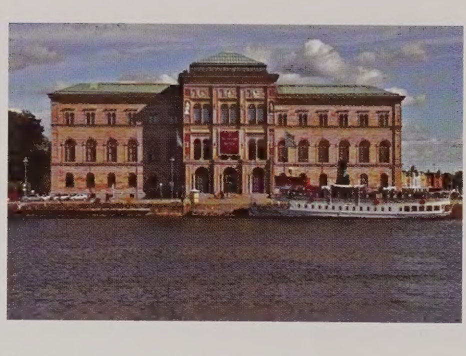


FIGURE 5. **The Swedish National Museum, Stockholm.**

working on a drug case in Los Angeles learned that a drug dealer was supposedly trying to sell the second Renoir **(FIG. 6)**. The drug operation became an art operation when agents arrested the dealer and recovered the Renoir from a pawn shop on Wilshire Blvd. To reduce the drug dealing charges against him and the charge of possession of stolen art, the drug dealer decided to cooperate with us in recovering the Rembrandt painting, which was the most valuable of the three stolen paintings. The dealer told us that the painting, a 1630 self-portrait, the only one on copper by the artist **(FIG. 7)**, with an estimated worth of $35 million, was still in Stockholm. He agreed to introduce us to the seller, to vouch for us.

> "The crime was beautifully thought out: machine guns, car bombs, a motorboat for getaway, and $42 million worth of paintings."

Because Sweden has laws against undercover operations, we had to do the case in Copenhagen, Denmark at the Scandic Hotel. After two weeks of negotiations, we told the criminals to bring the painting to us. In the hotel room the next day **(FIG. 8)**, I frisked the guys for weapons. I never wore a vest and never carried a weapon. Next, I "flashed the cash"; the agreed-upon sale price was $250,000. Theft deals involving undercover operations are strictly about making money for the criminals. The true art in an art theft is not the stealing, which anyone can do, but the selling, which is very difficult. Selling stolen art is about finding someone who will actually buy the stuff. It's not like a stolen car that you can chop into pieces to sell the parts. To put things in perspective, the $35 million Rembrandt self-portrait was stolen five years before. Who do the thieves find to buy it? An FBI agent! For $250,000! Less than 1% of the value **(FIG. 9)**.

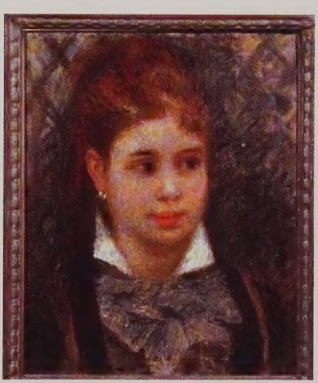


FIGURE 6. **PIERRE-AUGUSTE RENOIR, *Young Parisian*, c. 1875. Oil on canvas. Swedish National Museum, Stockholm. Stolen in 2000; recovered in 2005.**

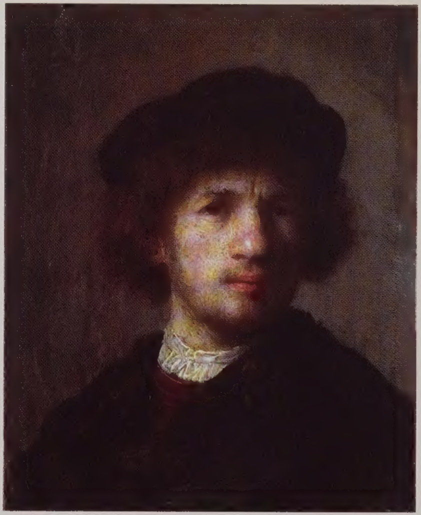


FIGURE 7. **REMBRANDT VAN RIJN, *Self-Portrait*, 1630. Oil on copper. Swedish National Museum, Stockholm. Stolen in 2000; recovered in 2005.**

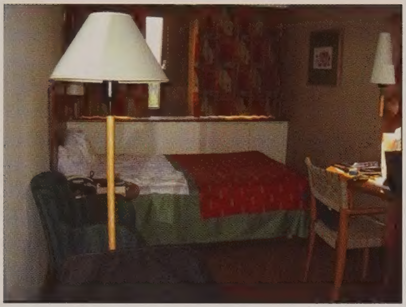


FIGURE 8. The room at the Scandic Hotel where the sting involving the stolen Rembrandt took place.

My next step was to authenticate the piece. I examined the painting, which looked exactly as it was supposed to look. The work was small, and small paintings are very portable. Artwork is popular among thieves because, besides diamonds, what else can you steal that is that portable, small, and worth so much? Once we authenticated the painting, it was time for the bust. The agents in the room next door were waiting for the code phrase "It's a done deal," before storming in. FYI, the best place to hide during a raid is in the bathtub. If there is shooting, a tub will stop the rounds from hitting you. Actually, by then I was probably running down the hall with the painting to hand it off to other agents.

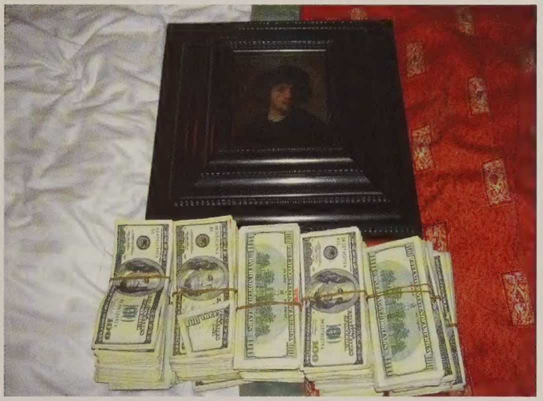


FIGURE 9. The Rembrandt *Self-Portrait* (FIG. 7), valued at $35 million, was purchased for $250,000 by the FBI during the sting.

> "Theft deals involving undercover operations are strictly about making money for the criminals. The true art in an art theft is not the stealing, which anyone can do, but the selling, which is very difficult. Selling stolen art is about finding someone who will actually buy the stuff."

Within two weeks of its recovery, the painting was hanging again on the wall of the museum in Stockholm. The criminals were convicted of possession of stolen art. Within three months, however, their one-year prison sentences were commuted because the drug dealer who vouched for us was the father of one of the thieves, and European courts decided that the use of the father against the son was a civil rights violation. Not surprisingly, the group returned to prison after a jewelry heist a couple of years later.

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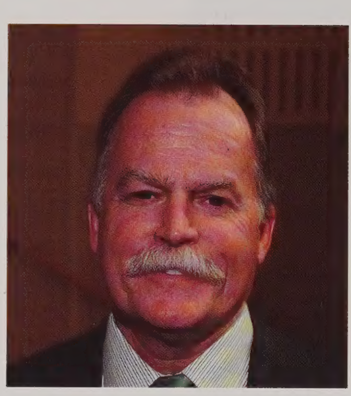
THE LEGAL PERSPECTIVE



ROBERT E. GOLDMAN*

It is fitting that an attorney should end this program, because cases involving a sting operation typically end up in court. In the 19 years that I was a federal prosecutor, I worked with Bob Wittman in recovering stolen art. Of course, a defense attorney was always on the other side trying to get an acquittal.

Whether we are dealing with sting operations or the recovery of stolen art, what typically happens, what *should* happen, is that law enforcement phones a lawyer. Because the FBI works with a federal prosecutor, Bob Wittman and I would work closely on these cases. From the Government's point of view, it is crucial to recover the stolen art as well as get a successful prosecution, a powerful deterrent. With prosecution, the Government sends a message that there are repercussions for those who engage in fraud or get involved in theft. In the days before Bob Wittman and ICE and other FBI agents like Jim Wynn, recovery was the main focus, and it ended there. But over the past decade, the government has realized that it is more important — or as important — to get a prosecution. Agents know something about the law, but lawyers know a little more, hopefully. So attorneys advise on these investigations.

> "From the Government's point of view, it is crucial to recover the stolen art as well as get a successful prosecution, a powerful deterrent."

I was asked to talk about entrapment. What is entrapment? Why should we worry about it? If it is borne out, entrapment is a complete defense to a criminal charge. Typically, it will not be borne out in a sting operation. In a trial, the burden of proof is on the Government to show beyond a reasonable doubt that the defendant was not trapped. The focus in an entrapment defense is on whether the government lured an otherwise innocent person who would not be involved in that type of criminal activity to commit the crime.

There are two parts to an entrapment: inducement and predisposition. An innocent person is entrapped if he is induced or persuaded by law enforcement or other agents to commit a crime that he had no previous intent to commit. Predisposition considers whether a defendant was an unwary innocent or, instead, an unwary criminal who was readily available to commit the offense. Was the person ready and willing to break the law? So, in the context of a sting, if someone is selling stolen art, selling smuggled goods that he has the predisposition to sell, an entrapment defense will not be viable.

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* Robert E. Goldman, Esq., is a former federal and local prosecutor and was appointed by the Department of Justice as the first At-Large Prosecutor for the FBI's National Art Crime Team. He is currently in private practice in Philadelphia as the principal in the law firm of Robert E. Goldman, Esq.

[1] National Stolen Property Act (NSPA), 18 U.S.C. 2314.

As a defense attorney now, I will consider an entrapment defense because I need to consider the gamut of possible defenses, but that defense will not be available in most cases involving a sting operation. An exception might occur in an undercover operation for a federal prosecution, which requires a federal offense. The typical federal offense is transportation of stolen property across state lines,[1] but if the thief does not want to sell across state lines, and the government entraps him to bring the stolen property across state lines, there could be an entrapment defense of that charge. So it is important that a government agent work with an attorney.

I will give an example where the Government (Bob Wittman at the FBI) and an attorney (I) successfully recovered a stolen item. The case concerned a beautiful Indian headdress made of gold and bald eagle feathers that Geronimo wore in the last Indian powwow. In the U.S. it is illegal to sell bald eagle feathers.[2] Did the online seller know he was committing a crime? To avoid a possible entrapment defense, we took pains to determine the seller's culpability. Working undercover in the guise of a broker, Bob Wittman contacted the seller and asked about the potential legal issues of the sale. Could he sell the headdress in the U. S., or would he need to get it out of the country? The seller, a Georgia attorney, not only informed Bob that he could not sell the item legally in the U.S. but also faxed him a copy of the bald eagle statute after first having underlined the portion stating it was illegal to sell bald eagle feathers! We now had ample evidence to prove that the seller was not entrapped and was prosecutable.

When I was a young prosecutor, I believed that anyone accused of a crime must have committed it. Now I am older and wiser and believe that there may be shades of gray. Sometimes, even the innocent get accused of crime. There are pitfalls for a possessor of stolen art, even an honest collector. I disagree with Agent Brent Easter when he says that the first thing a person should do when he goes into a room with him is to be honest. The first thing a person should do is call *me.* Let's say that you, a collector, have an item that is stolen from a museum. It is unlawful in the U.S. to possess it, sell it, conceal it, destroy it, etc. If you do just about anything with that stolen piece of art, you could be committing a crime. Even if you bought it from a dealer and had no idea it was stolen. When the FBI or ICE comes knocking on your door, what should you do? You need legal counsel. The burden of proof is on the Government to establish that the art is subject to forfeiture and to seize it from you. You need an attorney to navigate you through that process.

"If it is borne out, entrapment is a complete defense to a criminal charge. Typically, it will not be borne out in a sting operation."

Many types of problems can occur. With regard to sting operations, there have been cases where private citizens or their attorneys conduct their own negotiations — try to ransom their object back — while there's an ongoing federal investigation or a state prosecution. Those citizens or attorneys risk being accused of obstructing a government investigation. Similarly, cases have been prosecuted in the U.S. where a lawyer representing a client possessing stolen items attempts to broker a sale so that the client is not out of all of his money, but the attorney ends up being prosecuted for aiding or abetting a crime. Conspiracy to commit an offense might be another basis for prosecution.

Sting operations can also involve international law and thus require knowledge of the laws of the countries agents intend to be working in. One time, for example, Bob Wittman and I worked on a case where the criminal was in France. We wanted to phone France to make a tape recording. Fortunately, we did a little research and learned that it is a violation of French law for law enforcement

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[2] The American bald eagle is protected under The Bald and Gold Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Until 2007 it was also protected under the Endangered Species Act (ESA). In addition, various state laws and federal policies also protect the bird. BGEPA (June 8, 1940, ch 278, § 1, 54 Stat. 250; 16 U.S.C. § § 668a-668d.)

> "I disagree with Agent Brent Easter when he says that the first thing a person should do when he goes into a room with him is to be honest. The first thing a person should do is call *me*."

in the U.S. to call into France for purposes of an investigation.

Sting operations also require a knowledge of state laws in the U.S. Consider electronic surveillance. State laws vary. In many states, both parties must consent to a tape recording — both the person making the recording and the person on the other end, perhaps the criminal making the confession. Without consent, the person recording the conversation could be violating state wiretap statutes.

These are just some examples of the issues that law enforcement encounters when working with prosecutors. In closing, I would like to quote a famous *New Yorker,* Woody Allen: "Capital punishment would be more effective as a preventative measure if it were administered prior to a crime."

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ANATOMY OF AN ART STING

Q & A

Q The issue of authenticity came up with Charles Scribner regarding the Rubens and with Bob Wittman regarding the Rembrandt. In the *Weiss* case that Brent Easter spoke about, however, in which the coins turned out to be fake and, therefore, not antiquities dug out of the ground in Italy, the prosecutors were able to simply change the charge against Weiss and make it "attempted possession" of stolen property versus actual theft because the coins were fake. If you can simply change the charge to attempted rather than actual, why is it such an issue when a museum wants an item back if the item is fake or real?

A **ROBERT E. GOLDMAN (RG):** From a legal perspective, theft and fraud are distinct crimes. A theft case, a violation of the National Stolen Property Act or Interstate Transportation of Stolen Property, requires that the item in fact be stolen. If you charge somebody with possession of stolen property and it turns out to be fake, you don't have a theft case. Under federal law, there are also mail and wire fraud statutes. If you engage in a scheme to defraud another, you could be guilty of mail or wire fraud. Even if no theft was involved, if the scheme was to swindle someone by selling him a fake item, the perpetrator can be prosecuted under mail or wire fraud. I applaud Agent Easter for his successful prosecution. It's not so easy as simply flipping a switch. If I am representing somebody charged with theft, and the item turns out not to be stolen, my client did not commit theft. If the item is then identified as a fake and the prosecutors change the charge to scheming to defraud, there are now other burdens of proof. The prosecutors must demonstrate that the defendant knew the item was fake and misrepresented it as real, which is very difficult to prove without a sting operation or an admission.

A **BRENTON EASTER (BE):** Dr. Weiss thought the coins he was selling were authentic and stolen. We were able to charge him with attempted possession of stolen property because he was, indeed, attempting to possess stolen property. He was not attempting to swindle a buyer out of millions of dollars; he thought he was selling the real thing.

A **RG:** In cases like this, a defense attorney can say there was no crime because it's an impossibility. The defendant may have believed an item was stolen, but if it was not, in fact, stolen, he did not commit theft. That's why lawyers and agents get paid. In an undercover operation, an attorney and an agent must work closely with one another, hand in glove, because of the elements the prosecutors are trying to establish with the sting.

> "The defendant may have believed an item was stolen, but if it was not, in fact, stolen, he did not commit theft. That's why lawyers and agents get paid."
>
> —*Robert E. Goldman*

Q What is important about the Weiss case, something Brent Easter pointed out, is that the prosecutors changed the felony charge. Otherwise, Weiss might have faced years in jail.

A **ROBERT K. WITTMAN (RW):** There is a clear difference between a theft case and a fraud case. I worked on a case involving a fake Rembrandt, where we had to prove knowledge of fraud, that the perpetrator knew it was fake and that he was trying to commit a fraud. Are any of you familiar with the painting *The Man with the Golden Helmet?*

Formerly attributed to Rembrandt, it is in a museum in Germany. A man in St. Louis had a copy he bought from Sears. He put a little paint on it and tried to sell it as an authentic Rembrandt that he claimed was stolen during one of the Gulf Wars. Posing as a dealer, with a second agent posing as my buyer, the two of us met with the "Lebanese" seller, who was dressed for the occasion in a sheik outfit. The "sheik" then sold the painting to my buyer for $1 million. Working undercover, we were able to prove knowledge of fraud.

> "Dr. Weiss thought the coins he was selling were authentic and stolen. We were able to charge him with attempted possession of stolen property because he was, indeed, attempting to possess stolen property."
>
> —*Brenton Easter*

Q Tonight's program is a follow-up of sorts to a previous *IFAR Evening* on "Recovering Peru's Spanish Colonial Heritage," at which I was one of the speakers. At that program we addressed the steps a government can take to protect its cultural patrimony, including compiling inventories. Could any of our speakers discuss a case where a government did a particularly good job of defending its cultural patrimony? What advice would you give to a government that says it wants to do a better job?

A RG: Our government is not paying sufficient attention to art and cultural property crime. Here in New York City, for example, the number of agents handling these cases is insufficient. New York has some of the best agents in the field, but they are not getting enough support. What will happen in the future when not enough young agents are trained in this area? Someone doesn't become a Bob Wittman or Jim Wynn or Brent Easter for just a few years and then switch to another area. An agent needs to establish a reputation, to build a rapport and be the go-to person that people trust. The government should be doing more. Post 9/11, most of the focus, rightfully, is on counterterrorism. But, at the end of the day, our cultural patrimony still needs to be protected.

A CHRISTOPHER A. MARINELLO (CM): I agree with Bob and am not optimistic that current U.S. policy will change. Post 9/11, the government is reluctant to invest resources in solving art crime. The entire U.S. has an art crime team of 16 officers, whereas, Italy has 300 such officers. Tonight we discussed recoveries of paintings by Rembrandt and other very valuable items, but the reality is that most art objects that are stolen are valued at under $20,000 and the majority of theft victims will never see their stolen works of art again. The FBI and the police only have the resources to investigate crimes where items meet a high value threshold. A private organization like the Art Loss Register, however, can help fill the gap.

A BE: Homeland Security, is making a significant effort in dealing with art crimes. Working with the Department of State, we conduct biannual training with about 50 agents in each session. There's a minimum of two agents at every port, and every major SAC office handling cultural property crimes now has a minimum of two agents.

A CM: Brent and I just worked on a case together returning some stolen antiquities to the Bible Museum in Amsterdam. It took three years to effectuate this recovery. The government, in my opinion, is simply not putting enough agents out there; there are not enough resources to staff every U.S. point of entry with agents trained to identify stolen or looted works of art.

BRENTON EASTER = BE
ROBERT E. GOLDMAN = RG
CHRISTOPHER A. MARINELLO = CM
CHARLES SCRIBNER III = CS
ROBERT K. WITTMAN = RW

Q A buyer at auction who is trying to do due diligence and asks for a provenance usually does not get much information. Since auction houses do not have to divulge who the seller is or sometimes even who the previous owners were, what can a buyer do?

A **CM:** In addition to the database of stolen art, both the ALR and IFAR offer provenance research services on a fee basis. Trained art historians conduct the research.

> "Roughly 70% of the art that's reported to the ALR as stolen is insured. Recovery then presents the issue of legal ownership: Is the owner the insurance company or the original theft victim?"
>
> —*Christopher A. Marinello*

Q Theft victims often call their insurance companies. How frequently do insurance companies contact the ALR searching for stolen items because they have to pay out until the items are recovered?

A **CM:** We represent most of the fine art insurance companies, so whenever a work of art is stolen and a payout is made, the insurer will contact us and and record the theft on the database. Roughly 70% of the art that's reported to the ALR as stolen is insured. Recovery then presents the issue of legal ownership: Is the owner the insurance company or the original theft victim? Usually, the terms of the insurance policy will determine that. Some people have the right to buy recovered works back from their insurance company; some insurance companies will offer recovered works back to theft victims as a courtesy if the underlying policy is silent.

A **BE:** If an item offered for sale has a questionable provenance, the buyer could request the insurance records, if they exist.

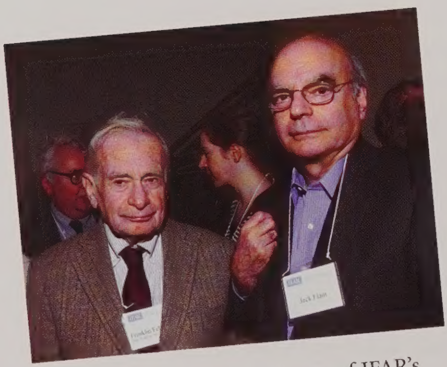
• • •

SCENES FROM AN IFAR EVENING

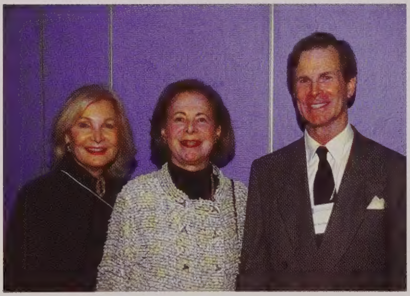
Victoria Shaw (left) and Gertrude Wilmers, Member, IFAR Board of Directors.

Brenda Ballin (left) and Miriam Goldfine.

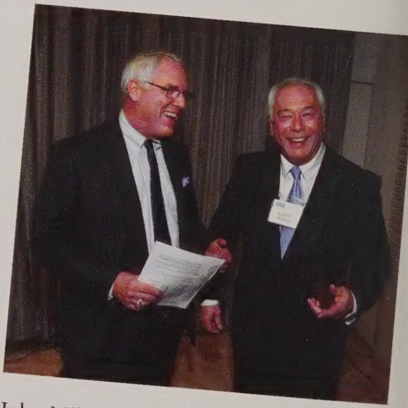
Anne-Marie Richard, Elin Lake Ewald, and Robert K. Wittman.



Franklin Feldman, Chairman of IFAR's Law Advisory Council, and Jack Flam.



Sharon Flescher, IFAR's Executive Director, Louise Braver, and Charles Scribner III.



John Miller (left) and Robert K. Wittman.

Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

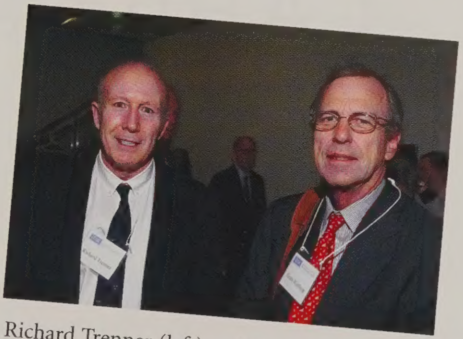
Stephen Feldman asks a question.

John Miller and Emily Altschul.

Christopher A. Marinello, Anthony Haden-Guest, and Richard Ellis.

Jessica Paindiris, Gaia Banovitch, Barbara Jo Lubitz, and Thomas R. Kline.

Haven Pell (left) with Ritchie and Charles Scribner III.


Richard Trenner (left) and Grant Winthrop.

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Most items in this publication are registered in the database of the Art Loss Register, which has an office in London, England at First Floor, 63-66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 44.207.841.5780. From the U.S., add the prefix 011.

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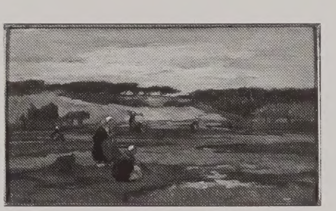
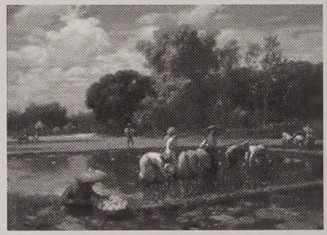
STOLEN ART*

PAINTINGS

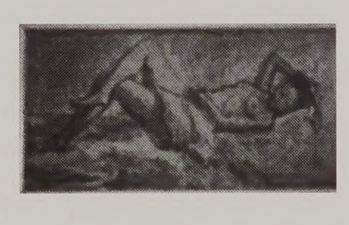
1. **JOHANNES EVERT HENDRIK AKKERINGA** (Dutch, 1861-1942). ***Nettenboetsters op het boetveld.*** Oil on panel. 14 x 24.5 cm (approx. 5 ½" x 9 ¾"). *L12.1235. Stolen from the Muzee Scheveningen, The Hague, The Netherlands, on December 2, 2012.


1

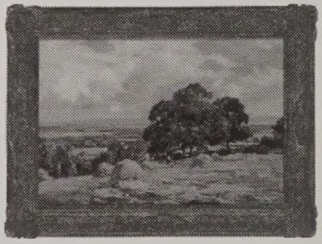
2. **FERNANDO AMORSOLO** (Filipino, 1892-1972). ***Rice Planting,*** 1920. Oil on canvas. 20" x 30" (50.8 x 76.2 cm). *L13.219. Stolen from a private residence in Atherton, CA on May 1, 2012.


2

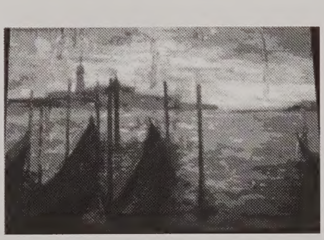
3. **BEN BENN** (Polish/American, 1884-1983). ***Reclining Nude,*** 1950. Oil on canvas. 24" x 30" (60.96 x 76.2 cm). *L13.324. Stolen from a private residence in Ridgefield, CT on March 23, 2013.


3

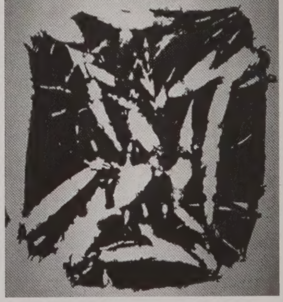
4. **OWEN BOWEN** (English, 1873-1967). ***Haycart by the Edge of the Woods.*** Oil on canvas. 11 ½" x 17 ½" (29.21 x 44.45 cm). *L12.1211. Stolen from a private residence in Advance, NC on July 24, 2012.


4

5. **MICHELE GERSHMAN** (American, contemporary). ***Venice.*** Oil on canvas. 18" x 24" (45.72 x 60.96 cm). Signed. *L12.1082. One of 11 paintings by the artist stolen from a restaurant in Indianapolis, IN on November 14, 2011.


5

6. **SIMON HANTAI** (French, 1922-2008). ***Laissée noire,*** c. 1981-1994. Acrylic on canvas. 215 x 178 cm (approx. 84 ½" x 78 ¾"). *L13.28. One of 29 paintings by the artist that were stolen in either of two locations in France—Meun and Paris—between 2005 and September 2008.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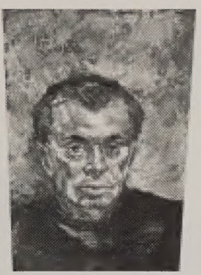
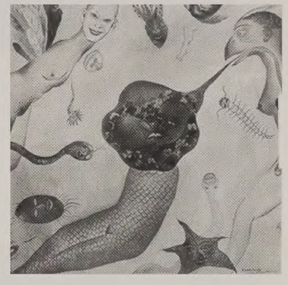
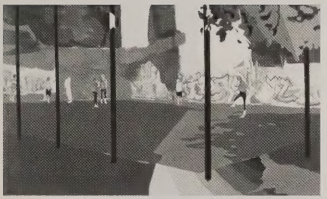
**Numbering for the year 2012/2013 Cumulative Index of Stolen Art begins with this issue.*


7

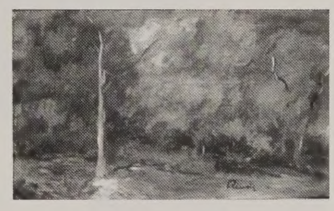
7. **MURIEL KAPLAN** (American, born 1924). ***Murray Kaplan,*** 1960. Oil on board. 24" x 18" (60.96 x 45.72 cm). *L13.201. Stolen from a gallery in New York on May 15, 1966.


8

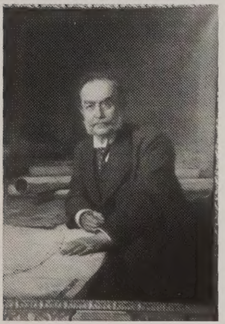
8. **SUN LIANG** (Chinese, born 1957). ***Man and Bird,*** 1992. Oil on canvas. 130 x 130 cm (approx. 51 ¼" x 51 ¼"). *L13.314. Stolen in transit from Venice, Italy to Hong Kong in June 1993.


9

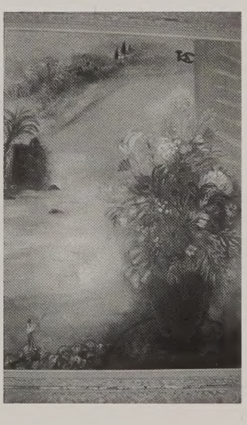
9. **DANIEL MOHR** (German, born 1976). ***Spielplatz,*** 2006. Oil on canvas. 119.99 x 200 cm (approx. 47 ¼" x 78 ¾"). *L13.346. Stolen from a hotel in Frankfurt, Germany between December 14, 2012 and January 15, 2013.


10

10. **PIERRE AUGUSTE RENOIR** (French, 1841-1919). ***Exterior View.*** Oil on canvas. 16 ½" x 16 ½" (41.91 x 41.91 cm). Signed l/r. *L13.243. Stolen from a private residence in Brooklyn Park, South Australia on March 5, 2013. See also item nos. 33-37 below.

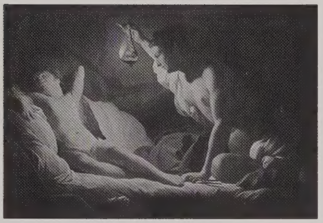

11

11. **HUGH GOLDWIN RIVIÈRE** (English, 1869-1956). ***Portrait of Sir Alfred Fernandez Yarrow,*** 1906. Oil. 152 x 121 cm (approx. 60" x 47 ½"). *L12.1175. Stolen from a college in Kent, England on November 1, 2011.

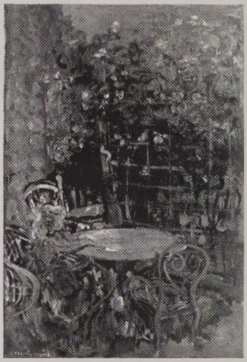

12

12. **REUVEN RUBIN** (Israeli, 1893-1974). ***Bouquet in Caesarea,*** 1971. Oil on canvas. 99.01 x 73 cm (approx. 39" x 28 ¾"). On the verso: #21 and the title. *L12.1122. Stolen from a private residence in Caesarea, Israel on August 30, 2012.

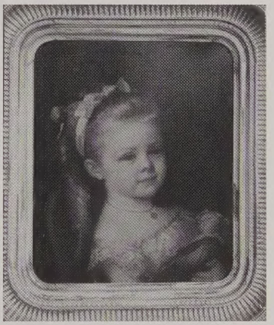
13. **PIERRE-HUBERT SUBLEYRAS** (French, 1699-1749). ***Cupid & Psyche.*** Oil on canvas. 127 x 188.49 cm (approx. 50" x 74 ¼"). *L13.221. Stolen from storage in London, England on October 15, 2010.


13

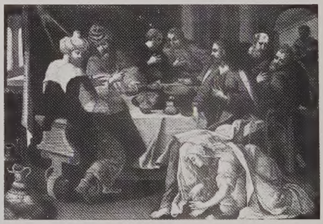
14. **CONSTANTIN TERECHKOVITCH** (Russian, 1902-1978). ***Nathalie dans le Jardin.*** Oil. 30" x 25" (76.2 x 63.5 cm). *L12.1239. Stolen from a private residence in Los Angeles, CA on June 9, 2011.


14

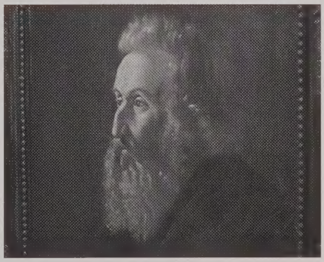
15. **Unknown Artist** (19th century). ***Little Girl Holding a Doll,*** 1874. Oil on canvas. 49.99 x 40.01 cm (approx. 19 ¾" x 15 ¾"). *L13.145. Stolen from a private residence in Wiltshire, England on September 12, 1995.


15

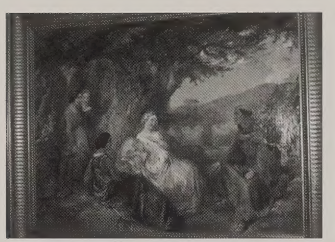
16. **Unknown Artist** (Flemish, mid 17th century). ***Mary Magdalene Washing Christ's Feet.*** Oil on copper. 27 x 39 cm (approx. 10 ½" x 15 ¼"). *L13.26. Stolen from a private residence in Kraainem, Belgium on December 24, 2012. See also item nos. 67 and 68 below.


16

17. **Unknown Artist. *Portrait of an Old Jewish Man*** (17th century). Oil on canvas. *L12.1241. Stolen from a private residence in Petah-Tikva, Israel on April 25, 2004.

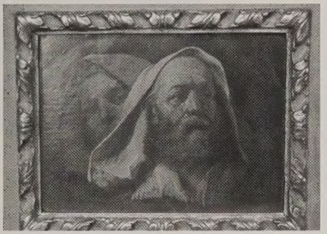

17

The following five paintings were stolen in Kraainem, Belgium on November 5, 2012. *L12.1125:



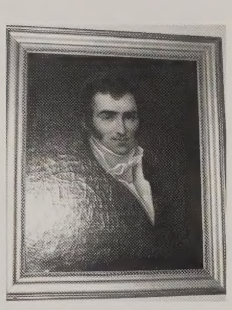
18

18. **EUGÈNE ISABEY** (French, 1803-1886). ***The Latin Lesson,*** 1855. Oil on canvas. 76 x 100 cm (approx. 30" x 39 ¼").



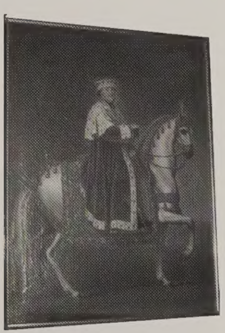
19

19. **JEAN BAPTISTE TIEPOLO,** after (Italian, 1696-1770). ***Study of Heads/Two Male Heads.*** Oil on paper laid on wood. 30 x 40.01 cm (approx. 4 ¾" x 15 ¾").



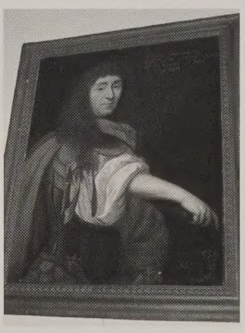
20

20. **Unknown Artist** (Belgian, 19th century). ***Portrait of Camille Briey.*** Oil on canvas. 61.01 x 49.99 cm (approx. 24" x 19 ¾").



21.

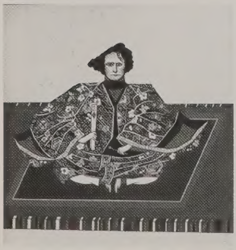
21. **Unknown Artist** (18th century). ***Portrait of Clement-Hubert-Wenceslas of Saxony, Archbishop-Prince Elector of Trier.*** Oil on canvas. 81 x 61.01 cm (approx. 32" x 24").



22

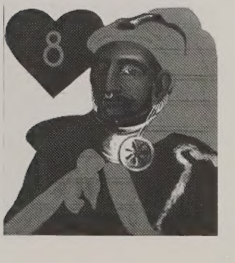
22. **Unknown Artist** (French, 17th century). ***Portrait of a Man/Military Officer Holding a Book,*** 1674. Oil on canvas. 92 x 73.99 cm (approx. 36 ¼" x 29 ¼").

The following two paintings by **TINA MION** (American, contemporary) were stolen from a private residence in Phoenix, AZ on January 1, 2011. *L13.254. See also item no. 28 below:



23

23. ***Franklin Pierce, Two of Diamonds,*** 1996. Acrylic and watercolor on board.



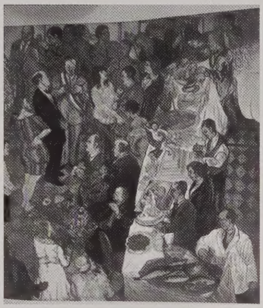
24

24. ***Tenskwatawa, Eight of Hearts,*** 1996. Acrylic on birchwood.

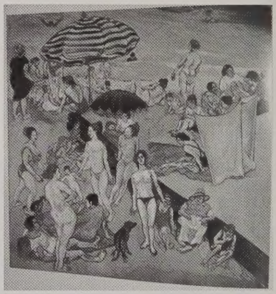
The following two paintings by **MORENO PINCAS** (Israeli, 20th century) were stolen from a private residence in New York City on October 15, 2011. *L12.1185:

25. ***La Légion d'Honneur,*** 1999. Oil on canvas. 130 x 130 cm (approx. 51" x 51").

26. ***Parasol Rayé,*** 1999. 130 x 130 cm (approx. 51" x 51").



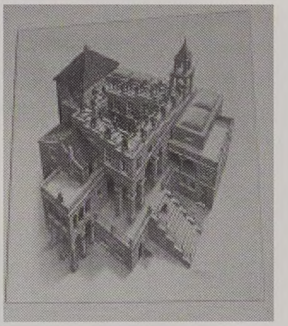
25



26

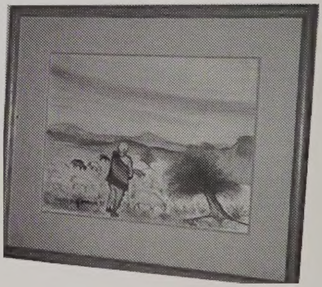
WORKS ON PAPER

27. **M. C. ESCHER** (Dutch, 1898-1972). ***Ascending and Descending,*** 1960. Lithograph. 30 x 24.99 cm (approx. 11 ¾" x 9 ¾"). Ed. no. 53/108. *L13.181. Stolen from a private residence in Jefferson, NC on December 23, 2012.



27

28. **CARL N. GORMAN** (American, 1907-1998). ***Watching the Herd,*** c. 1991-94. Watercolor. 12" x 15" (30.48 x 38.1 cm). Stolen from a private residence in Phoenix, AZ on January 1, 2011. *L13.254. See also item nos. 23 and 24 above.

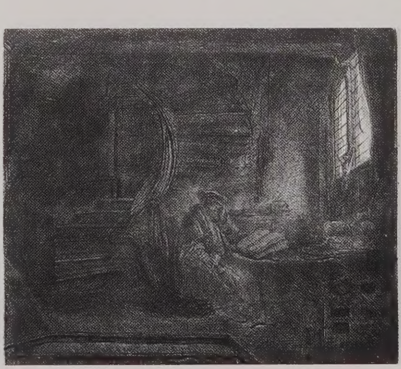


28

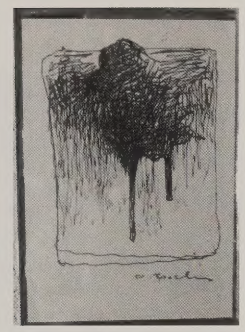
29. **ADOLPH GOTTLIEB** (American, 1903-1974). ***Untitled.*** See color photo on inside back cover.

30. **ERNST LUDWIG KIRCHNER** (German, 1880-1938). ***Dancing Nude in the Studio,*** 1929. See color photo on inside back cover.

31. **REMBRANDT HARMENSZ. VAN RIJN** (Dutch, 1606-1669). ***St. Jerome in a dark chamber,*** 1642. Etching. 14.86 x 17.14 cm (approx. 5 ¾" x 6 ¾"). *L12.1192. Stolen from a private residence in Sydney, Australia on November 20, 2005.

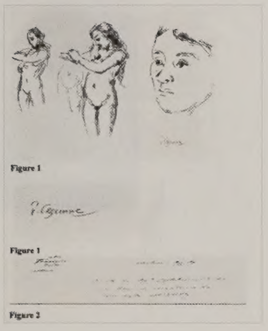


31


32

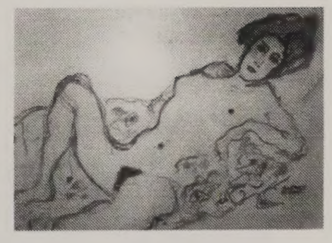
32. **KOSTAS TSOKLIS** (Greek, born 1930). ***Nothing 7.*** One of a series of drawings entitled Nothing. India ink on paper / papier maché. 11.5 x 8 cm (approx. 4 ½" x 3 ¼"). Signed l/r. *L13.2. Stolen in Spinalonga, Greece on November 6, 2012.

The following five works on paper were stolen from a private residence in Brooklyn Park, South Australia on March 5, 2013. *L13.243. See also item no. 10 above:

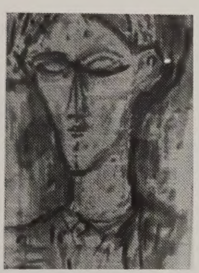


33

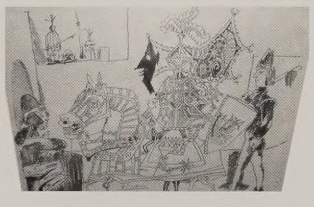
33. **PAUL CÉZANNE** (French, 1839-1906). ***Untitled.*** Pencil on paper. 24.13 x 8.41 cm (approx. 9 ½" x 3 ¼").


34

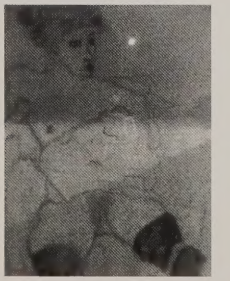
34. **GUSTAV KLIMT** (Austrian, 1862-1918). ***Nude.*** Drawing on paper. 19.99 x 24.99 cm (approx. 7 3/5" x 9 ¾").


35

35. **AMEDEO MODIGLIANI** (Italian, 1884-1920). ***Untitled (Portrait of a Woman).*** Drawing on newsprint. 47.7 x 30.4 cm (approx. 18 ¾" x 12").


36

36. **PABLO PICASSO** (Spanish, 1881-1973). ***Untitled,*** 1951. Ink and pencil on paper. 34.9 x 26.01 cm (approx. 13 ¾" x 10 ¼").

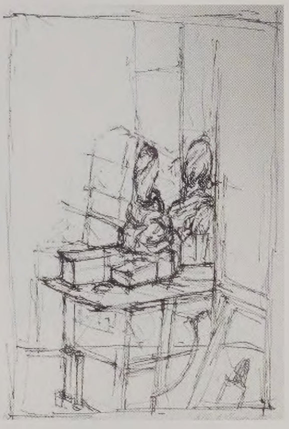

37

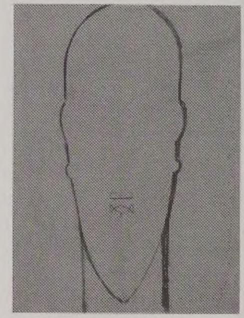
37. **EGON SCHIELE** (Austrian, 1890-1918). ***Nude.*** Drawing on paper. 16.99 x 22 cm (approx. 6 ¾" x 8 ½").

The following two works on paper were stolen from a private residence in New York City on March 13, 2013. *L13.312:

38. **ALBERTO GIACOMETTI** (Swiss, 1901-1966). ***Vue de l'atelier de l'artiste,*** 1949. Pen and ink on paper.

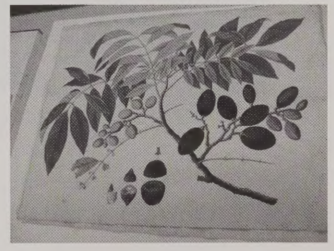
39. **AMEDEO MODIGLIANI** (Italian, 1884-1920). ***Study for a Sculpted Head***, c. 1911-12. Blue crayon on buff-colored paper. 10" x 8" (25.4 x 20.32 cm).


38

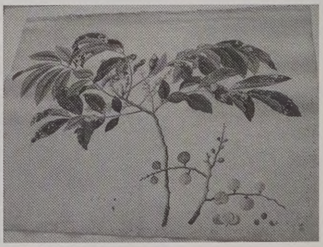

39

The following two works on paper were stolen from a university in London, England on November 7, 2012. *L13.279:

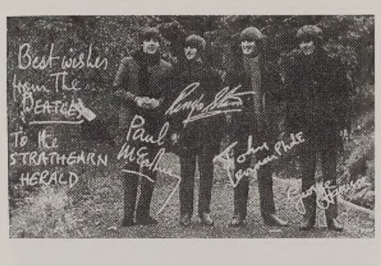
40. **Unknown Artist** (from the Reeves Collection). ***Canarium commune (Black Olive),*** c. 1813-1830. Watercolor on paper. 48.21 x 38 cm (approx. 19" x 15"). Recto, l/l: two Chinese characters in ink, translated as "Wu lan," and "92" in graphite. Verso, upper edge: "35640 – 1001"; "EJD117"; "15" in graphite. The paper is watermarked: J. Whatman 1805.


40

41. **Unknown Artist** (from the Reeves Collection). ***Canarium pimela (Yellow Fruit),*** c. 1817-1830. Watercolor on paper. 48.21 x 30 cm (approx. 19" x 11 ¾"). Recto: l/r: 2 Chinese characters in black ink; l/l: "94" in graphite. Verso: "35641-1001" in graphite. The paper is watermarked: M&J Lay 1817.


41

PHOTOGRAPHS

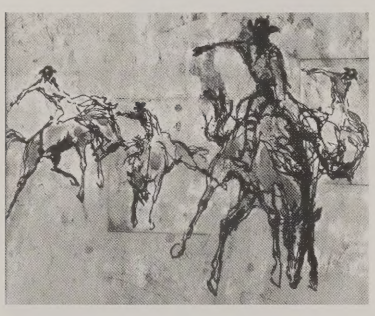

Best wishes from The BEATLES
To the STRATHEARN HERALD

42

42. **DAVID PHILIPS** (Scottish). ***The Beatles in Strathearn,*** 1963. 10.01 x 10.01 cm (approx. 4" x 4"). *L12.603. Stolen in Perthshire, England on October 6, 1965.

PRINTS, LITHOGRAPHS

43. **KAREL APPEL** (Dutch, 1921-2006). ***Personnage fond gris.*** See color photo on inside back cover.

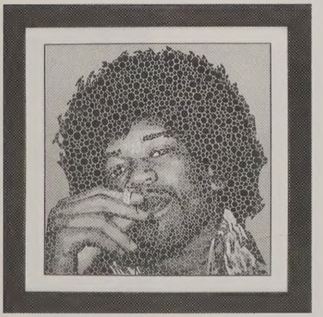


46

44. **KEITH HARING** (American, 1958-1990). ***Sportswear International Cover,*** 1987. See color photo on inside back cover.

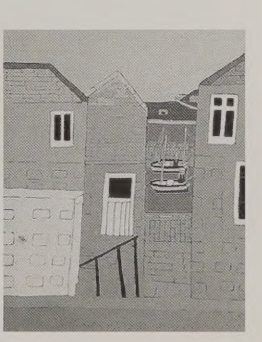
45. **ALPHONSE MARIE MUCHA** (Czechoslovakian, 1860-1939). ***Cassan Fils,*** 1896. See color photo on inside back cover.

46. **LEROY NEIMAN** (American, 1921-2012). ***Rodeo,*** 1980. 24 x 26 cm (approx. 9 ½" x 10 ¼"). Ed. no. 214/250. *L12.604. Stolen from a private residence in Webster Groves, MO on May 12. 2012.



47

47. **PAUL NORMANSELL** (English, born 1978). ***Hey Joe (Jimi Hendrix).*** 33" x 33" (83.82 x 83.82 cm). Print on aluminum. *L12.1238. One of three works stolen from a gallery in Wiltshire, England on October 3, 2012.

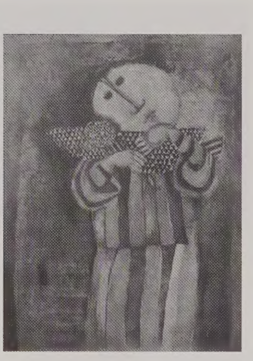


48

48. **BRYAN PEARCE** (English, 1929-2007). ***The Gap, Bethesda Hill (artist's proof).*** *L12.572. Stolen from a private club in Cornwall, England on June 1, 2012.

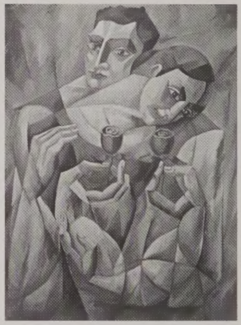
The following two works were stolen from a private residence in Los Angeles, CA on December 31, 2012. *L13.25:

49. **GRACIELA RODO BOULANGER** (Bolivian, born 1935). ***L'enfant et la Chevette,*** 2005. Lithograph. 20" x 16" (50.8 x 40.64 cm). Ed. no. 15/100.



49

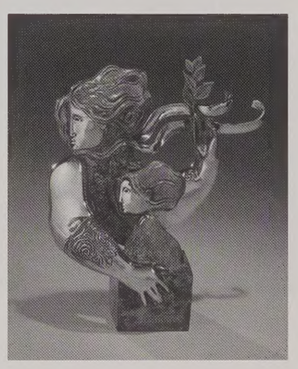
50. **YUROZ** (Armenian, born 1956). ***Preservation of Love,*** 2005. Serigraph. 40" x 30" (101.6 x 76.2 cm).



50

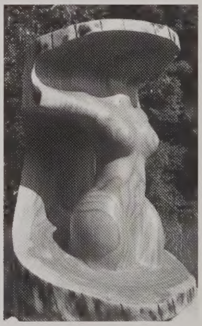
SCULPTURE

51. **SUNOL ALVAR** (Spanish, born 1935). ***Maternitat,*** 2000. Bronze. H: 12 ½" (31.75 cm). W: 10 ½" (26.67 cm). *L13.306. Stolen from a gallery in San Francisco, CA on February 15, 2013.



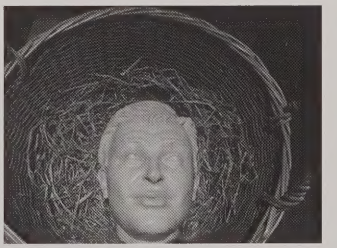
51

52. **WOUTER DU BOIS** (Dutch, contemporary). ***The Goddess,*** 2012. Wood. 80 x 50 cm (approx. 30 ½" x 19 ¾"). *L13.2. Stolen in Haren, The Netherlands on August 7, 2012.

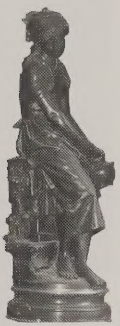


52

53. **IAN HAMILTON FINLAY** (Scottish, 1925-2006). ***Waldemar Januszczak,*** 1996 (one of Three Heads). White resin. Ht: 32.99 cm (approx. 13"). *L12.1127. Stolen from Glasgow Museums, Glasgow, Scotland on December 11, 2010.

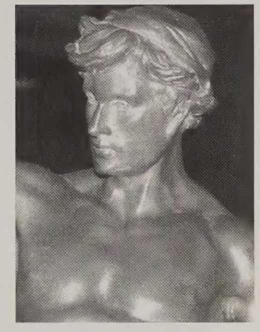


53



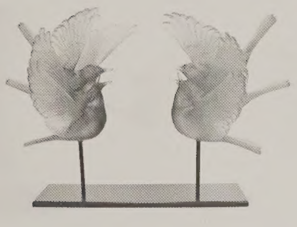
54

54. **MATHURIN MOREAU** (French, 1822-1912). ***Jeune fille à la cruche cassée.*** Bronze. H: 89.99 cm (approx. 35 ½"). *L13.2. Stolen in Sainte Foy les Lyon, France on October 14, 2012.



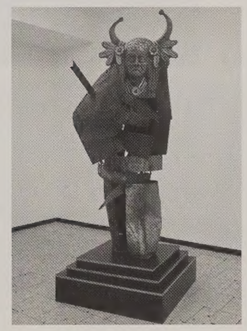
55

55. **EMILE LOUIS PICAULT** (French, 1839-1915). ***Laborem,*** c. 1900 (shown: detail). Bronze and gold. H: 18" (45.72 cm). W: 4" (10.16 cm). Signed: E. Picault. *L13.119. Stolen from a private residence in San Diego, CA on December 29, 2012.



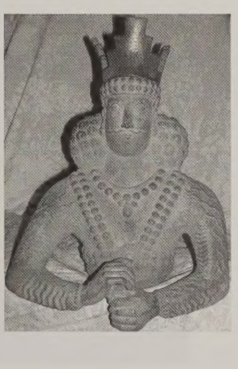
56

56. **KATHERINE RUTECKI** (Kiwi, contemporary). ***Blue/Green Diptych,*** 2010. Glass. H: 14" (35.56 cm). W: 10" (25.4 cm). *L13.41. Stolen from a gallery in Seattle, WA between December 24, 2012 and January 3, 2013.



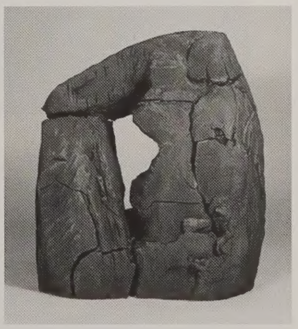
57

57. **MARKUS SELG** (German, born 1974). ***Der Chronist (Wounded Knee),*** 2005. Metal, wood, and plastic. H: 224.99 cm (approx. 88 ½"). W: 89.99 cm (approx. 35 ½"). *L13.291. Stolen from a gallery in Vienna, Austria on January 14, 2006.



58

58. **Unknown Artist** (Slovakian, c. 300 BC). ***Shapur II.*** Bronze. H: 37.01 cm (approx. 14 ½"). *L12.1276. Stolen from a private residence in Tehran, Iran on December 10, 2011.



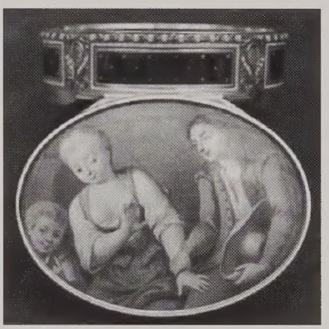
59

59. **SHIRLEY ALMEDA WEST** (American, died 2010). ***Earth Woman 21.*** *L13.19. Stolen from the artist's residence in New York City.

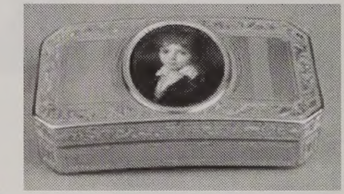
DECORATIVE ARTS

*The following items were stolen in Namur, Belgium on December 30, 2012. *L13.2:*

60. **JOSEPH-ÉTIENNE BLERZY** (French, active 1768-1808). ***Snuffbox,*** c. 1783. Gold, enamel, and pearls. 2.79 x 8 cm (approx. 1" x 3 ¼").

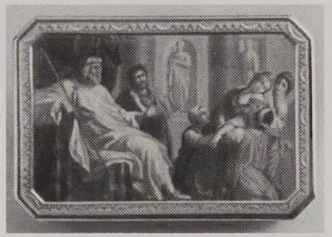

60

61. **FRANÇOIS CHÂTEAU** (French, FL. 1802-1806). ***Snuffbox,*** c. 1819-1838. Gold. 2.01 x 8.51 cm (approx. ¾" x 3 ½"). Inscribed: L P Bernard, rue de la paix no. 1.


61

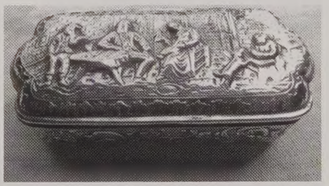
62. **MAURICE MAYER** (French, 19th century). ***Snuffbox,*** c. 1858. See color photo on inside back cover.

63. **JEAN-GEORGES RÉMOND** (Swiss, 18th century). ***Snuffbox,*** c. 1809-1815. Gold and enamel. 1.5 x 8.99 cm (approx. ½" x 3 ½").

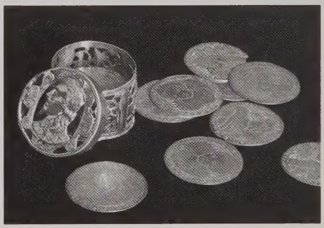

63

The following three boxes were stolen from a private residence in Oxford, England on September 25, 2012. *L12.996:

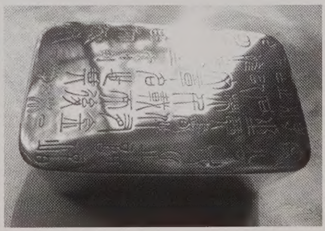
64. **Unknown Artist.** ***Box,*** 1850. Silver. Ht: 4.01 cm (approx. 1 ½"). W: 10.01 cm (approx. 4").


64

65. **Unknown Artist.** ***Charles I Counter Box,*** 1640. Silver. Contains 26 counters depicting English monarchs with coats of arms. Recto: profile of Charles I. H: 3.51 cm (approx. 1 ¼"). W: 2.49 cm (approx. 1").

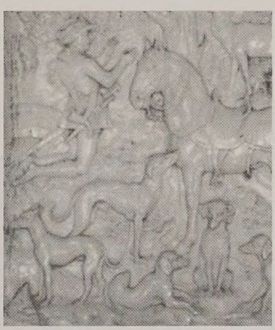

65

66. **Unknown Artist.** ***Box with Hieroglyphic (or Chinese) Writing on the Front*** (20th century). Silver. 5 x 7 cm (approx. 2" x 2 ¾").


66

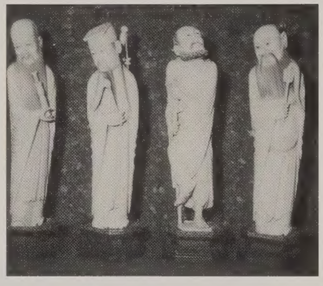
IVORY

The following two items were stolen from a private residence in Kraainem, Belgium on December 24, 2012. *L13.26. See also item no. 16 above:



67

67. **Unknown Artist** (German, 16th century). ***St. Eustache Hunting*** (shown: detail). Ivory. 16" x 21" x 2" (40.64 x 53.34 x 5.08 cm). *

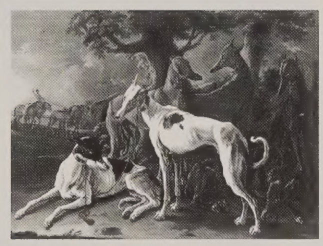


68

68. **Unknown Artist** (Chinese, Giaqing period). ***The Eight Sages,*** c. 1796-1822 (shown: detail). Ivory on wooden socles inlaid with cloisonné, enamels and silver fillets. H: 28.5 cm (approx. 11 ¼").

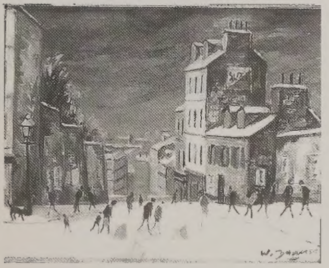
MISSING ART*

PAINTINGS



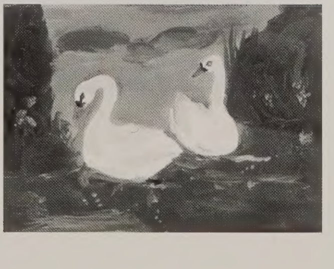
1

1. **DOMENICO BRANDI** (Italian, 1683-1736). ***Scene di Caccia (Hunting Scene).*** *L13.205. Missing from a warehouse in London, England on November 2, 2012.



2

2. **WILLY JAMES** (Swiss, 1920-2004). ***Montmartre sous la neige, la maison de Mimi Pinson.*** Oil on canvas. 32.99 x 41 cm (approx. 13" x 16 ¼"). Signed l/r. *L13.31. One of 12 paintings and works on paper missing from a gallery in Den Haag, The Netherlands on December 31, 2012.

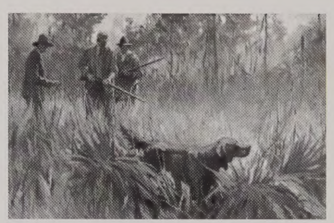


3

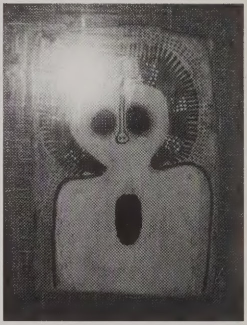
3. **KAREN KILIMNIK** (American, born 1955). ***The Pond,*** 1999. Oil on canvas. 5" x 7" (12.7 x 17.78 cm). *L13. 97. Missing from a gallery in Beverly Hills, CA on April 1, 2012.

**Numbering for the year 2012/2013 Cumulative Index of Missing Art begins with this issue.*

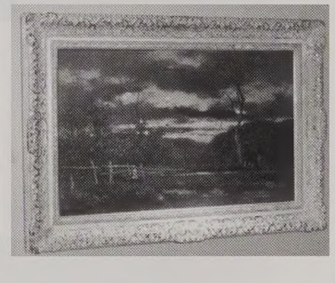
4. **WILLEM HENRY DETHLEF KOERNER** (German/ American, 1878-1938). ***Bird Hunters: Cash in Hand,*** 1930. Oil on canvas. 28" x 40" (71.12 x 101.6 cm). *L13.360. Missing in transit in Houston, TX on June 15, 2012.


4

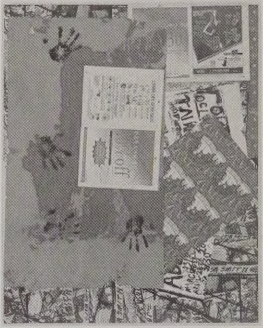
5. **CHARLIE NUMBLEMOORE** (Australian, 1907-1971). ***Yellow Wandjina,*** 1970. Natural pigment on bark. 59.99 x 40.01 cm (approx. 23 ½" x 15 ¾). *L13.22. Missing from a private residence in Cheltenham, Victoria, Australia on December 24, 2012.


5

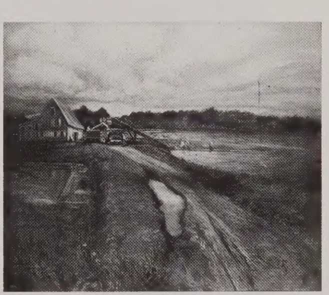
6. **WILLEM ROELOFS** (Dutch, 1822-1897). ***Sunset.*** Oil on canvas. 46.5 x 73 cm (approx. 18 ¼" x 28 ¾"). *L13.262. Missing from a private residence in Molstraat, The Netherlands on April 24, 2010.


6

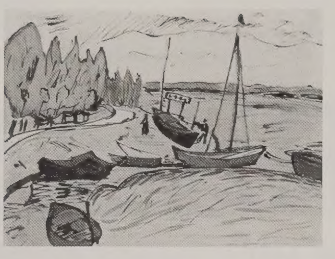
7. **JOSH SMITH** (American, contemporary). ***Untitled,*** 2007. Mixed media on panel. 60" x 48" (152.4 x 121.9 cm). Ed. no. 1/1: Unique JSC07676. *L12.627. Missing in transit between New York City and Oslo, Norway on January 9, 2008.


7

8. **EDMUND C. SULLIVAN** (American, contemporary). ***Cranberry Harvest,*** 1987. Oil on canvas. 5' x 6 ½'. Signed l/r. *L12.1065. One of two paintings by the artist missing in transit between Cotuit, MA and Naples, FL on May 1, 1994."

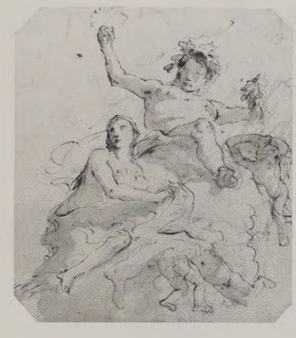

8

WORKS ON PAPER



9

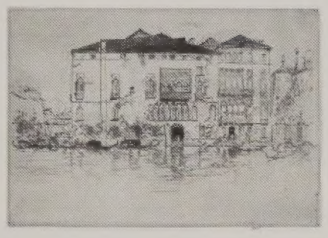
9. **ERICH HECKEL** (German, 1913-1999) ***13/Hafen.*** Watercolor. 40.01 x 53.01 cm (15 ¾" x 20 ¾"). Signed l/l. *L12.589. Missing from a storage facility in Hamburg, Germany between June 5, 2009 and June 4, 2012.



10

10. **GIOVANNI DOMENICO TIEPOLO** (Italian, 1727-1804). ***Bacchus and Ariadne,*** c. 1744-50. Pen and brown ink, brown wash over black chalk on paper. 23.01 x 18.49 cm (approx. 9" x 7 ¼"). *L13.77. Verso: numbered "2" and "13589." Missing in transit in New York City on January 8, 2013, probably left behind in a taxicab.

ETCHINGS

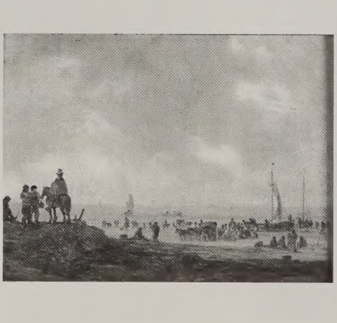


11

11. **JAMES ABBOT MCNEIL WHISTLER** (American, 1834-1903). ***The Palaces,*** c. 1879-80. Etching. 9.09 x 14.12 cm. (approx. 3/12" x 5 ½"). From an edition of 100. Catalogs: G23833 Whistler; Kennedy 187iii/iii; Glasgow 223vi/vi; Mansfield 184. *L13.337. Missing in transit in San Francisco, CA on March 29, 2013.

RECOVERED ART*

PAINTINGS



1

1. **JAN VAN GOYEN** (Dutch, 1596-1656). ***Harbour Scene (The Beach Scheveningen),*** 1643. Oil on panel. 25 x 32 cm (approx. 9 ¾" x 12 9⁄16). *N79.213.6. One of twelve items stolen from the home of an antique picture frame dealer in London, England on August 22, 1979. (See ***Art Theft Archive Newsletter,*** Vol. 1, no. 9, November 1979, item no. 10.) Recovered with the help of the ALR in May 2013 after it was auctioned in Italy in April.

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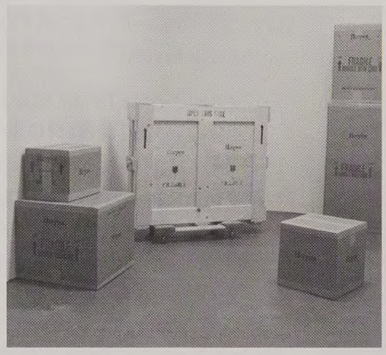

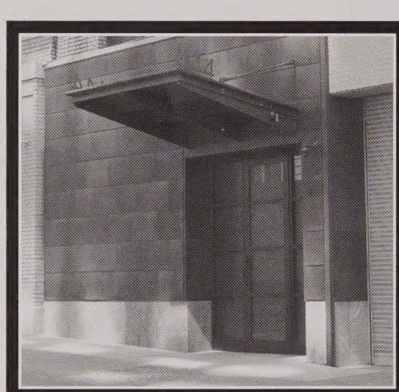

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STOLEN ART

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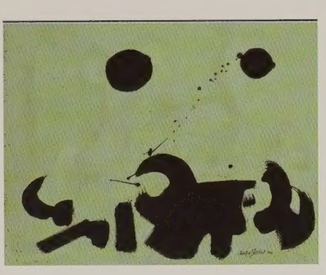
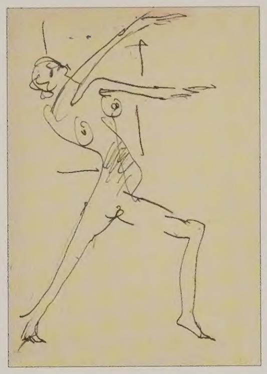
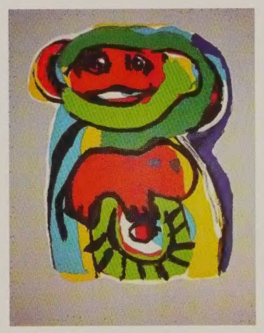

29

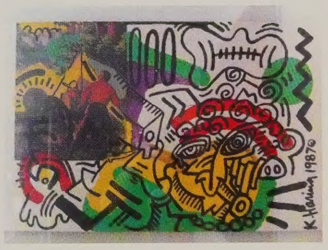

30

29. **ADOLPH GOTTLIEB** (American, 1903-1974). ***Untitled.*** Acrylic and ink on paper. 20″ x 26″ (50.8 x 66 cm). Signed l/r. *L13.81. Stolen from the Miami Art Fair on December 10, 2012.

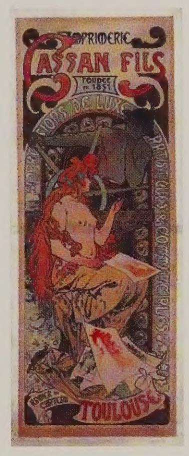
30. **ERNST LUDWIG KIRCHNER** (German, 1880-1938). ***Dancing Nude in the Studio,*** 1929. Ink and watercolor on paper. 29.69 x 20.5 cm (approx. 11 ¾″ x 8″). Dresler SKB 159, p. 31. *L12.1266. Stolen in transit in Hannover, Germany on December 25, 2012.

PRINTS, LITHOGRAPHS


43



44



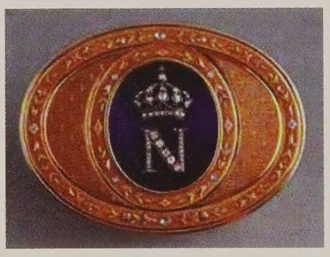
45

43. **KAREL APPEL** (Dutch, 1921-2006). ***Personnage fond gris.*** Lithograph. (no dimensions given.) Artist proof. l/l: E.A. *L13.2. Stolen in Breukelen, The Netherlands on December 22, 2012.

44. **KEITH HARING** (American, 1958-1990). ***Sportswear International Cover,*** 1987. 60″ x 80″ (152.4 x 203.2. cm). Signed l/r: K. Haring 1987. *L12. 1029. Stolen from a private residence in Thalwil, Switzerland on March 26, 2012.

45. **ALPHONSE MARIE MUCHA** (Czechoslovakian, 1860-1939). ***Cassan Fils,*** 1896. Lithograph. 72.39 x 179.07 cm (28 ½″ x 70 ½″). Verso: 7891. *L12.1282. Stolen in transit in Laguna Beach, CA on November 23, 2012.

DECORATIVE ARTS


62

62. **MAURICE MAYER** (French, 19th century). ***Snuffbox,*** c. 1858. Enamel, gold, and diamonds. 2.5 x 8 cm (approx. 1″ x 3/1/4″). Inscribed: présent de l'empereur napoleon iii à sir charles weatstone. *L13.2. Stolen in Namur, Belgium on December 30, 2012. See also item nos. 60, 61 and 63 on p. 90.

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Art Theft:
its scope, its impact,
and its control

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